



PHD

The politics of indigenous self-determination

Extractive industries, state policies and territorial rights in the Peruvian Amazon

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The politics of indigenous self-determination

Extractive industries, state policies and territorial rights in the Peruvian Amazon

Roger Merino Acuña

A thesis submitted for the degree of Doctor of Philosophy

University of Bath

Department of Social and Policy Sciences

February 2015

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Table of Contents

Table of Contents.....	1
Acknowledgements.....	6
Abstract	8
List of Abbreviations	9
Chapter 1: Introduction.....	12
1.1. The aims of the research, the argument and the contribution to knowledge.....	12
1.2. Relevance of the research	14
1.3. The context of the research.....	16
1.4 Research key concepts	18
1.4.1. The meaning of indigenous peoples and territorial rights.....	18
1.4.2. The meaning of indigenous self-determination	20
1.4.3. The meaning of the political.....	23
1.4.4 The meaning of dispossession.....	24
1.4.5. The meaning of extractivism	25
1.5. The research questions.....	27
1.6. Outline of the Chapters	27
Chapter 2: Indigenous politics: self-determination in front of global capitalism, the liberal state and Western modernity	29
2.1. Introduction	29
2.2. The violent foundations of liberal capitalism	29
2.3. Coloniality, indigenous peoples and trans-modern dialogues.....	33
2.3.1 The coloniality of power	33
2.3.2 Coloniality of knowledge and being	34
2.3.3. The projects of trans-modernity and intercultural translation	36
2.4. Indigenous politics beyond recognition and redistribution.....	38
2.4.1. Global coloniality and the debate on globalisation	38
2.4.2. Indigenous peoples and the debate on ‘new social movements’	43
2.4.3. Indigenous politics and identity politics	45

2.4.4. Indigenous politics and the state: between autonomy and counter-hegemony	48
2.5. Conclusion.....	51
Chapter 3: Beyond inclusion and exclusion: the encounters of liberal legality and indigenous peoples.....	53
3.1. Introduction	53
3.2. The legal factor: indigenous peoples and liberal legality	53
3.2.1. Colonial means of elimination. Doctrines of ‘just war’ and ‘terra nullius’	54
3.2.2. Modern means of assimilation.....	55
3.2.3. Indigenous peoples in the era of multiculturalism.....	58
3.3. Liberal multiculturalism and indigenous peoples	61
3.3.1. Political foundations of multiculturalism.....	61
3.3.2. Multiculturalism and indigenous peoples: Self-determination or accommodation?63	
3.3.3 Liberal multiculturalism in Latin America	65
3.4. Assessing the politics of multicultural liberal legality	68
3.4.1. The potentiality and limitations of liberal legality.....	68
3.4.2. Critical Western perspectives on liberal legality	70
3.4.3. Decolonial human rights: struggling for the ‘right to have communal rights’	72
3.5. Conclusion.....	75
Chapter 4: Negotiating alternatives to capitalism and development: <i>Buen vivir</i> and the possibilities of institutional transformation	76
4.1. Introduction	76
4.2. Private property and developmental strategies for indigenous peoples	77
4.2.1. Modernisation and dependency theory: from market capitalism to state capitalism	77
4.2.2. The limitations of alternative development	79
4.2.3. Private property and the new wave of ‘Law and Development’	81
4.2.4. De Soto’s popular capitalism and the revival of assimilation and modernisation theories.....	83
4.3 Alternatives to development: from post-development to <i>Buen vivir</i>	85
4.3.1. Post-development and <i>Buen vivir</i>	85
4.3.2. <i>Buen vivir</i> and degrowth	87
4.3.3. <i>Buen vivir</i> in Bolivia and Ecuador.....	89
4.3.4 <i>Buen vivir</i> and post-extractivism	92
4.4. Interculturalidad and the possibilities of institutional transformation	94
4.5. Conclusion.....	97

Chapter 5: Research Methodology	99
5.1. Research epistemology.....	99
5.2. Research design: methodological approach, research methodology and methods.....	102
5.2.1. Methodological approach: participatory action research	102
5.2.2 Extended Case study.....	103
5.2.3. Interviews with indigenous peoples, indigenous organisations and activists	108
5.2.4. Interviews with state officials, company representatives and academics	109
5.3. Data Analysis.....	110
5.4. Ethical issues	113
Chapter 6: Indigenous politics and indigenous rights in the Peruvian Amazon: the meaning of the ' <i>Baguazo</i> '.....	115
6.1. Introduction	115
6.2. Baguazo short-time memory: the dog in the manger	116
6.2.1 The history of <i>Baguazo</i> as a history of deception	118
6.3. Legal and ontological violence in the Andes.....	120
6.3.1. The Law of conquest and resistance	120
6.3.2. The ontological violence: the debates on indigenism	122
6.3.3. From indigenous to peasants: the peasant communities in agrarian and post-agrarian reforms	126
6.4. Legal indigenism and politics in the Amazon	129
6.4.1. Native Law and native communities	129
6.4.2 Amazonian indigenous ontologies	133
6.4.3. Amazonian political articulations	137
6.6. Conclusions	141
Chapter 7: Indigenous rights and the conflictive transition toward an intercultural state	143
7.1. Introduction	143
7.2. The colonality of the new legal indigenism	143
7.2.1. <i>Baguazo</i> 's legal consequence: Prior Consultation Law.....	143
7.2.2. Prior to Prior Consultation: territoriality vs. colonality.....	146
7.2.3. The right of self-determination, the national interest and the appropriation of liberal legality.....	148
7.3. Indigenous political struggles and the conflictive transition toward an intercultural state	151
7.3.1. Extractive industries and social conflicts	151
7.3.2. Theorising social conflict: Laws, institutions and hidden indigeneity	154

7.4. Institutionalising indigeneity in a 'mining country': the contradictions of state attempts of interculturalisation.....	159
7.5. Conclusion.....	163
Chapter 8: The <i>Baguazo</i> re-considered: local struggles/global utopias	165
8.1. Introduction	165
8.2. The Baguazo and the meaning of indigeneity today	165
8.3. Globalisation, development and indigenous peoples: the possibilities and challenges of interculturalidad and Buen vivir	170
8.3.1. <i>Interculturalidad</i> among indigenous peoples, the state and companies	170
8.3.2 Rethinking <i>Buen vivir</i> in the Amazon	174
8.3.3. The challenges of <i>Buen vivir</i> : Exception, violence and the political economy	176
8.4. Local struggles/global utopias: Inverting the political imagination	179
8.5. Conclusion.....	184
Chapter 9: Conclusions, contributions and implications of the research	185
9.1 Introduction	185
9.2. Summary of research aims	186
9.3. Research questions and conclusions	186
9.4. Contributions and implications of the thesis	191
9.4.1. Theoretical contributions.....	191
9.4.2. Empirical contributions	193
9.4.3. Policy implications	194
9.5. Limitations and future research agendas	195
Bibliography.....	198
Appendix 1: Letter of introduction	237

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Abstract

This thesis offers an investigation of the indigenous politics of self-determination in the Peruvian Amazon. The starting point of the analysis is the '*Baguazo*', a massive indigenous protest (June 2009) against governmental laws that favoured extractive industries within indigenous territories. Studies of indigenous peoples' opposition to extractive industries in Peru have tended to focus on the economic, political or social aspects as if these were discrete dimensions of the conflict. This thesis aims to contribute with an integral and systematic understanding of indigenous resistance to extractive industries through a case study analysis and a multidisciplinary theoretical proposal. The thesis contains 9 chapters: introduction (Chapter 1); theoretical framework (Chapters 2, 3 and 4); methodology (Chapter 5); case study analysis and discussion (Chapters 6, 7, and 8); and conclusion (Chapter 9). The theoretical chapters explain how liberal legality recognises indigenous peoples as ethnic minorities with property entitlements, while self-determination goes a step further to recognise indigenous peoples as 'nations' with 'territorial rights'. The case study chapters explore the struggle of the Awajun indigenous people for self-determination and examine the legal and political consequences of the *Baguazo* as well as the re-emergence of indigenous politics in Peru.

The main argument provided in this thesis is that indigenous territorial defence against extractive industries expresses a politics of self-determination that confronts coloniality as the foundation of the extractive governance. Coloniality denotes that, even though colonial rule ended in formal political terms, power remains distributed according to colonial ontology and epistemology. Consequently, social and economic relationships regarding indigenous peoples still respond to an inclusion/exclusion paradox: indigenous peoples are either excluded from liberal capitalism or included into it under conditions that deny indigenous peoples' principles. Thus, the struggle for self-determination locates many indigenous people beyond the inclusion/exclusion dialectic and promotes an extension of 'the political' with the aim of reconfiguring the state-form and its political economy.

List of Abbreviations

AAA: American Anthropological Association.

AIDSEP: Interethnic Association for the Development of the Peruvian Amazon (*Asociación Interétnica de Desarrollo de la Selva Peruana*).

CAOI: Andean Coordinator of Indigenous Organisations (*Coordinadora Andina de Organizaciones Indígenas*).

CCP: Peasant Confederation of Peru (*Confederación Campesina del Perú*).

CEO: Chief Executive Officer.

CERD: Committee on the Elimination of Racial Discrimination.

CIA: Central Intelligence Agency.

CIPA: Centre of Amazonian Research and Promotion (*Centro de Investigaciones y Promoción Amazónica*).

CISA: Indian Council of South America (*Consejo Indio de Sud-América*).

CNA: Agrarian National Confederation (*Confederación Nacional Agraria*).

CNPC: Chinese National Petroleum Corporation.

COICA: Coordinator of the Indigenous Organisations of the Amazonian Basin (*Coordinadora de las Organizaciones Indígenas de la Cuenca Amazónica*).

COMINTERN: The Communist International.

COMISEDH: Commission of Human Rights (*Comisión de Derechos Humanos*).

CONACAMI: National Confederation of Peruvian Communities Affected by Mining (*Confederación Nacional de Comunidades del Perú Afectadas por la Minería*).

CONAIE: Confederation of Indigenous Nationalities of Ecuador (*Confederación de Nacionalidades Indígenas del Ecuador*).

CONAP: Confederation of Amazonian Nationalities (*Confederación de Nacionalidades Amazónicas*).

CUNARC: National Centre of *Rondas Campesinas* (*Central Única Nacional de Rondas Campesinas*).

DAR: Law, Environment and Natural Resources (NGO: *Derecho, Ambiente y Recursos Naturales*).

DRIP: the United Nations Declaration on the Rights of Indigenous Peoples.

ECLAC: The United Nations Economic Commission for Latin America and the Caribbean

ENAHU: National Household Survey (*Encuesta Nacional de Hogares*).

FEMUCARINAP: National Federation of Peasant and Indigenous Women of Peru (*Federación Nacional de Mujeres Campesinas, Artesanas, Indígenas, Nativas y Asalariadas del Perú*).

FTA: Free Trade Agreement.

GDP: Gross domestic product.

IADB: Inter-American Development Bank.

IBC: Institute of the Common Good (*Instituto del Bien Común*).

ICC: Indian Claims Commission.

ICESCR: International Covenant on Economic, Social and Cultural Rights.

ICHR: Inter-American Commission of Human Rights.

ICMM: International Council on Mining and Metals.

ICoHR: Inter-American Court of Human Rights.

IDL: Institute of Legal Defense (*Instituto de Defensa Legal*).

ILO: International Labour Organisation.

IMF: International Monetary Fund.

INEI: National Institute of Statistics and Informatics (*Instituto Nacional de Estadística e Informática*).

INRENA: National Institute of Natural Resources (*Instituto Nacional de Recursos Naturales*).

ITTO: The International Tropical Timber Organization.

MCPs: Multicultural policies.

NGO: Non-governmental organization.

NSM: New social movements.

ODECOAC: Indigenous Organisation for the Development of Alto Comaina Communities (*Organización Indígena de Desarrollo de las Comunidades del Alto Comaina*).

ODECOFROC: Organisation for the Development of Frontier Communities of the Cenepa (*Organización de Desarrollo de las Comunidades Fronterizas del Cenepa*).

ONAMIAP: National Organisation of Andean and Amazonian Indigenous Women of Peru (*Organización Nacional de Mujeres Indígenas Andinas y Amazónicas del Perú*).

ORPIAN: Regional Organisation of the Indigenous Peoples of Northern Amazon (*Organización Regional de los Pueblos Indígenas de la Amazonia Norte del Perú*).

PCM: Presidency of the Council of Ministers (*Presidencia del Consejo de Ministros*).

PETT: Special Program of Land Titling and Rural Registry (*Proyecto Especial de Titulación de Tierras y Catastro Rural*).

PRATEC: Andean Project for Peasant Technologies (*Proyecto Andino de Tecnologías Campesinas*).

SENACE: National Service of Environmental Certification (*Servicio Nacional de Certificación Ambiental*).

SNMPE: National Society of Mining, Petroleum and Energy (*Sociedad Nacional de Minería, Petróleo y Energía*).

SPDE: Peruvian Society of Eco-Development (*Sociedad Peruana de Eco-Desarrollo*).

UN: United Nations.

UNCA: Union of Aymara Nationalities (*Unión de Comunidades Aymaras*).

UNDP: United Nations Development Program.

WBG: World Bank Group.

WIPO: World Intellectual Property Organization.

WTO: World Trade Organisation.

Chapter 1: Introduction

... *Apuchuitkun tiñu áyayi, “shir uun junta emtin” tuusha anaiyin armiyai, jutikas jakayi tiaruiti. Tukuaruiti, awainki tukuaruiti, uweja amua tikich uwejan jimar iruksha tukuaruiti tiñu armayi, turasha awarunka jachamiayi, jakachuiti.*

[The people call him the “maximum leader”, and as such, the intruders believed he was dead. People tell that he was shot again and again up to seven times, but the Awajun did not die and never died].

Dina Ananco, *El Baguazo*, Amazonian story.

1.1. The aims of the research, the argument and the contribution to knowledge

In June 2009, the town of Bagua in the Peruvian Amazon was the scene of one of the most tragic and relevant political events in recent Peruvian history. Awajun and Wampis indigenous peoples had been blocking the *Curva del Diablo* highway for two months, protesting against a governmental package of decrees approved by President García and directed to facilitate the exploitation of natural resources in indigenous territories. After several weeks of negotiations, the government had no intention to derogate the most controversial decrees and the tensions increased.

On the 5th of June, President Garcia ordered to clear the highway with a strong public force. As a result hundreds of people were wounded and 33 people died. This uprising of Awajun and Wampis indigenous peoples known as *Baguazo* has had deep political and institutional consequences that are analysed in this thesis. On the one hand, the Peruvian society had to admit that Amazonian indigenous peoples were politically organised and ready to struggle for their rights. On the other hand, the government had to retract the most controversial decrees related to indigenous collective property and began a legal reform that would recognise indigenous rights and *interculturalidad* (interculturality) as a policy principle. Nonetheless, the tensions and conflicts between the Awajun, the state and oil and mining companies still continue to exist in the Amazon.

This thesis uses the *Baguazo* as the starting point for the analysis of the tensions and conflicts between the politics of the indigenous people Awajun for the defence of their territorial rights, and the expansion of mining and oil activities in the Amazon. Indeed, the *Baguazo* embodies a complex political encounter where the local and the global; the institutionalised and the unofficial; the indigenous and the *mestizo*; and the past, the present and the future converged and interacted.

First, the immediate cause of the *Baguazo* can be observed in the legislative implementation of the Free Trade Agreement (FTA) between Peru and the United States (U.S.). Namely, the context for the *Baguazo* is provided by the global political economy and the pressures that it exerts on national governments to facilitate the exploitation of natural resources by transnational corporations. It is also a context marked by the globalisation of indigenous rights, and the interaction between global indigenous

movements and national/local social movements towards the construction of a political discourse that frames their local struggle against the global political economy.

Second, the *Baguazo* expresses the encounters between institutionalised and unofficial politics. The institutionalised political means such as formal political representation was overcome by an active street politics deployed by indigenous movements. In addition, the terms of discussion proposed by the *Baguazo* extend the political imagination in Peru and propose what I call the extension of the political. The political imagination in Peru suggests that indigenous peoples are recognised *as citizens* with equal rights and the possibility of political and economic participation. The political imagination that expressed the *Baguazo* suggests that indigenous peoples in the Amazon struggle *as peoples* for self-determination and territorial rights.

Third, re-emergence of discussions about indigenous identities and the meaning of indigeneity also arose with the *Baguazo*. Who are indigenous peoples in twenty first century Peru? Why did *mestizo* people support the Awajun and Wampis? Is it possible to talk about *a new politics of indigeneity* in Peru? These questions emerged with the *Baguazo*. But the turning point that this event represents was not only a rupture in politics but also in policies. The Consultation Law and the emergence of intercultural policies responded to the re-emergence of indigeneity.

Fourth, the *Baguazo* was not simply about the present, but also about the past and the future. In that sense, the *Baguazo* is not solely an event that took place in June 2009, it is part of old indigenous struggles against coloniality. That is the reason why this thesis is neither a specific analysis of the *Baguazo* and Awajun's contestation to extractivism, nor an assessment of its political effects. The *Baguazo* is a turning point not because it creates a new political scenario but because it showed that a new political scenario was emerging; it is part of chains of historical events that marked the life of indigenous peoples in the Amazon. As the *Baguazo* is neither the beginning nor the end of this chain, this political event invites us to reflect on the future and the political articulations and proposals of indigenous peoples.

Therefore, the general aim of this thesis is to study and examine what the *Baguazo* *represents* and past and current Awajun political encounters with the state, companies and the global political economy. In addition, the specific aims of the research are:

- To contribute to a multidisciplinary understanding of the tensions and conflicts between indigenous peoples' territorial rights and liberal capitalism by means of an extension of the decolonial perspective in the fields of political theory, political ecology and critical legal theory.
- To contribute to the improvement of policymaking related to indigenous rights, environmental regulation and extractive industries regulation.
- To explore the contribution of the principles of indigenous self-determination and territoriality in constructing an economic and legal alternative to liberal capitalism.

Thus, I analyse the ontological and epistemological dimensions, as well as what I call 'the regulative dimension' (i.e. the legality and the economy) of the contested encounters between indigenous politics and extractive policies. These encounters

express the relation between the politics and policies that emerge from Amazonian indigenous visions on the one hand, and state and companies views on the other hand. These encounters also show the terms of negotiation between these two poles, and the tensions and the possibilities of overcoming the dichotomy of exclusion or inclusion of indigenous peoples. This thesis then engages with the literature on political philosophy, political theory, political anthropology and political ecology. It also engages with the literature on indigenous rights and international law.

The argument of this thesis is that the indigenous territorial defence against extractive industries expresses an indigenous politics of self-determination that confronts coloniality as the foundation of liberal multiculturalism and the political economy of extraction. Coloniality means that even though formal colonialism ended up in legal and political terms, in our societies power is still distributed around a colonial ontology and epistemology. Consequently, the regulative aspects of the society (how social and economic relations are organised) still respond to the inclusion/exclusion paradox: indigenous peoples are either excluded from liberal capitalism or included into it under conditions that deny indigenous principles. Thus, despite the occurrence of relevant changes in political, legal and economic discourses and policies (from imposition to multiculturalism, from economic growth to development, and so forth), the colonial ontology and epistemology still rule the way the state relates to indigenous peoples. This explains why indigenous peoples maintain a tense and ambiguous relation with liberal legality: they simultaneously use it to organise their defence of territory and criticise its inability to translate indigenous cosmologies into rights. Thus, indigenous peoples struggle for self-determination but this struggle is also a struggle against coloniality and therefore it addresses the legal/political, economic and ontological/epistemological dimensions through which coloniality exists and perpetuates itself. There is a comprehensive project of *decolonisation* that by confronting the 'inclusion/exclusion' paradox moved beyond liberal legality and capitalist institutions.

The thesis contributes to knowledge by providing both the theoretical tools for a better understanding of the conflicts between indigenous peoples' territorial rights and extractive activities, and empirical knowledge about the Awajun case, in particular the state's mechanisms directed to the inclusion/exclusion of indigenous peoples, the limitations of the multicultural and intercultural policy reforms, the challenges of indigenous peoples' organisations, and the potentials of indigenous politics of self-determination. Overall, the thesis contributes to the extension of the decolonial perspective in the areas of political theory, legal studies and political ecology.

1.2. Relevance of the research

The research responds to the necessity of a comprehensive understanding of the tensions and conflicts between Amazonian indigenous peoples' territorial rights and the governance of extractive activities. There are a few studies in the fields of political anthropology and political ecology that undertake an analysis of Amazonian indigenous politics in Peru in relation to the state and extractive industries (Bebbington and Humphreys, 2011; Greene, 2009; Orta-Martínez, and Finer, 2010; Rénique, 2009; Espinosa, 2009; Schmall, 2011; Santos and Barclay, 2010), but there is not a complete examination of all the dimensions of the encounters. This research inaugurates an multidisciplinary account of the theme, which interconnects political theory, political

ecology and critical legal theory. In addition, this thesis is relevant to understanding the current processes of interculturalisation of state policies and indigenous politics in Peru and Latin America.

Indeed, the importance of the research goes beyond Peruvian frontiers because the tensions and conflicts between indigenous peoples' territorial rights and extractive industries is a worldwide issue. Certainly, as a consequence of the liberal capitalist expansion, indigenous peoples around the world suffer similar injustices (Fenelon and Hall, 2008). I will show some recent examples to demonstrate its topicality.

In Australia, the Courts recognised indigenous' land rights for first time in 1992 in favour of the Meriam people, but still the government has the right to exploit indigenous land on behalf of the national interest (Ritter, 2009), which is triggering new conflicts around mining activities (Altman and Martin, 2009). Similar problems emerged with the Maori in New Zealand: although there was a legal recognition of Maori territory, the Free Trade Agreements signed by the government in recent years promote policies that give rights over Maori resources to large corporations (Bargh, 2007; Banner, 2007; Stewart-Harawira, 2005).

A similar situation generated strong indigenous mobilisations in Mexico, where the North American Free Trade Agreement with the United States (U.S.) and Canada (NAFTA, 1994) promoted a legislative modification directed to dispossess indigenous land. This fact triggered the Zapatista uprising: indigenous peoples occupied the main towns of the State of Chiapas and demanded territorial rights and the respect of their own forms of governance (Esteva and Suri, 1998; Ceceña and Barreda, 1998).

In the Ecuadorian Amazon, Texaco's oil exploitation caused acute environmental damage, and affected many indigenous peoples with disease and displacement, including the Huaorani, Secoya and Cofán who have been involved in transnational litigation against the company (Sawyer, 2004; Rodriguez-Garavito and Arenas, 2005). In Colombia, the U'wa have been struggling against Shell, Oxy and Ecopetrol (the national oil company) for the oil exploitation undertaken within their territory (Rodriguez-Garavito and Arenas, 2005). In Chile, Mapuche communities have protested against national and international timber companies that affect the local agriculture by extracting water from Mapuche's soil (Richards, 2010). Similar cases appear across Latin America. In Nicaragua, Bolivia, Paraguay, Brazil, to mention just a few countries, indigenous peoples struggle through national and transnational litigation against the state and corporations that affect indigenous territories and livelihoods (Rodriguez-Garavito and Arenas, 2005; Richards, 2010; Fenelon and Hall, 2008).

In Nigeria the Ogoni have been claiming compensation due to the damage to their health and livelihoods produced by Shell's oil exploitation over decades (Cayford, 1996). In the Central African rainforest, around 300,000 Batwa are facing intense pressures on their territories because the forests are cleared for agrobusiness (UN, 2009). In Southern Africa, the San of Namibia have suffered from land dispossession since colonisation and up until today's liberal and democratic regime. The current constitution establishes that the land and natural resources are recognised only as state property or private property; the Namibians communal land has no legal protection (Vermeylen, 2009).

There are similar conflicts in response to the implementation of huge development projects such as the construction of dams (e.g. in India, Adivasi peasants opposed the state's construction of dams on the Narmada River that would inundate their riverbed fields; currently Brazilian Amazonian indigenous peoples struggle against the Belo Monte dam project); or the expansion of economic activities, such as the building of roads (e.g. the protests for defending the TIPNIS - an indigenous and ecological area - against the highway project implemented by President Morales in Bolivia). Most of them, nonetheless, are connected in one way or another to the political economy of extraction. In addition, the justification of governments and companies in all cases is the same: the necessity of modernisation and development, and the dealing with indigenous peoples through multicultural participation.

The means to dispossess indigenous peoples in the current multicultural era are related to property rights, contract law, economic policies, and developmental policies embedded in liberal legality and the capitalist economy. These techniques are applied in 'settler colonialism' contexts (for example, in the U.S., Canada, Australia and New Zealand), where the colonising power exported a sufficient portion of its own population to supplant rather than subordinate indigenous peoples, who are encapsulated within the resulting settler state (Churchill, 2002); as well as in external colonial contexts (for instance, in India, Latin America and Africa), where indigenous populations were subordinated to external colonial powers (Veracini, 2011). In both cases, with the independence from former European powers there has been an aggressive process of 'internal colonialism' by which the dominant nation-state expands its dominion over indigenous territories. Indeed, these political tensions and conflicts emerge in a similar way in industrialised countries and the so-called developing countries (Whall, 2005).

1.3. The context of the research

Peru has a long history of indigenous peoples' oppression and extractive industries' dependence. While in the following chapters I will return to the colonial roots of the tensions and conflicts, in this part I briefly explain the current Peruvian political economic context.

At the beginning of the neoliberal era in Peru (the nineties), global financial institutions such as the International Monetary Fund (IMF); the World Bank Group (WBG) and the World Trade Organisation (WTO) were very influential in the shaping of the Peruvian political economy and its policies of privatisation, reduction of public expenditures, tax benefits for extractive industries, free trade agreements, and elimination of trade barriers. With the implementation of these measures, Peru was considered one of the most neoliberal countries in the world (Bury, 2005).

This beneficial institutional environment for businesses has allowed extractive industries to enter into areas that were considered to be restricted, such as frontier zones or highly fragile ecological areas; it also has allowed an increasing process of mergers and acquisitions among companies, and the augmenting of the number of concessions in the Andes and the Amazon (De Echave, 2011). At the beginning of the nineties, mining concessions occupied 2 million 300 thousand hectares, and by 2011 they occupied over 24 million, 19% of Peruvian territory (De Echave, 2011). The same process is observed with hydrocarbon exploitation: at the end of 2008, 72% of the Peruvian Amazon was

under concession for petroleum and gas exploration and exploitation (Finer and Orta-Martinez, 2010). Moreover, between 1990 and 2007, Peru received US\$12.35 billion in mining investments, being one of the most important global exporters of silver, copper, zinc, lead and gold, and this tendency is maintained in spite of the financial crisis because of the demand from China and Brazil (Bebbington and Bury, 2009).

The contribution of extractive activities to the whole economy is normally understood as crucial. Although between 2007 and 2009 the extractive sector contributed less in generating jobs than agriculture (1.5% of the total employed population vs. 32.7% in agriculture and 26.4% in services) (Francke, 2009); it produced indirect effects on employment, and in fiscal terms these activities constitute a relevant contribution: between 2007 and 2010 it meant an average of 22% of total tax collection and 42% of total income tax.

But even though it could be argued that the extractive industry has sustained the continuous economic growth of around 6% in the last 10 years, it has been achieved at high social cost. In 2007, the Peruvian Ombudsman's office recorded 78 social conflicts in the country, of which 37 were socio-environmental; by January 2014, it recorded 213 social conflicts, of which 136 were socio-environmental (Ombudsman's Office, 2014).

Indeed, the other face of the great Peruvian macroeconomic performance and economic growth is inequality and social instability. According to the official classical measurements of poverty (based only on income) the poverty of rural households is 3.2 times more than the poverty of urban areas (INEI, 2013). According to the Human Development Index, there is a huge inequality within the country: Lima's score is more than the double of Huancavelica, the poorest Andean region (UNDP, 2013). In addition, Peruvian spending on social programs is much less than the Latin-American average (ECLAC, 2012); and only 17% of the people consider as 'just' the wealth distribution in the country, which is a percentage located under the Latin American average (25%) (Latinobarómetro, 2013). This is not a surprise when it is estimated that 25% of the total population has no access to water, more than half lack adequate health attention, and the quality of education is among the lowest in the hemisphere (Schmall, 2011).

It is important to mention also that in the last Environmental Performance Index (EPI), which measures environmental health and ecosystem vitality, Peru is ranked as one of the worst countries in Latin America, above only Paraguay, Haiti, Guyana and El Salvador (Yale University, 2014). These figures help to explain the contrast between macro-economic performance and social discontent.

1.4 Research key concepts

In this section, I describe and discuss fundamental concepts for the development of my argument. These concepts are recurrent in the thesis and are relevant to understanding the theoretical approach of the research.

1.4.1. The meaning of indigenous peoples and territorial rights

The indigenous peoples' world population and its incidence in national and global policy-making is each day more relevant. According to the United Nation Permanent Forum of Indigenous Peoples, there are over 370 million indigenous people in 90 countries, living in all regions of the world, representing 5% of the world's population (UN, 2009).

In Peru there is not an official number for indigenous persons, although according to some studies they represent around 25% to 45% of the whole population (ENAHU, 2005; WBG, 2004; CIA, 2014). In addition, the state has recognised the existence of 52 indigenous peoples (Official Data Base, 2014); one of these indigenous peoples is the Awajun or *Aguaruna* people. According to the Vice Ministry of Intercultural Affairs (Official Data Base, 2014), in the census of indigenous communities of the Amazon of 2007, an estimated 55 366 people self-identified as Awajun.

There are different parameters for identifying indigenous populations, such as the sharing of language, land possession, ancestral ways of social relations, self-identification and ascendancy, amongst others. In any case, defining the term 'indigenous peoples' is a very contentious task. In this thesis, the term 'indigenous peoples' primarily refers to the criteria established by International Law, particularly Convention 169 of the International Labour Organisation of 1989 (ILO Convention 169), which is a compulsory legal instrument for those countries that have ratified it (Peru ratified the Convention in 1994):

Article 1

1. This Convention applies to:

(...)

*(b) peoples in independent countries who are regarded as indigenous on account of **their descent from the populations which inhabited the country**, or a geographical region to which the country belongs, **at the time of conquest or colonisation** or the establishment of present state boundaries and who, irrespective of their legal status, **retain some or all of their own social, economic, cultural and political institutions.***

*... **Self-identification** as indigenous or tribal shall be regarded as a **fundamental criterion** for determining the groups to which the provisions of this Convention apply.*

This definition usually is understood as containing two criteria, one objective and the other subjective (Martinez Cobo, 1987). The objective criterion refers to the maintenance of institutions rooted in pre-colonial life; and the subjective criterion, which is the most important, refers to the self-identification as member of an indigenous people. The criteria are however open to interpretation and dispute, indeed, there is a politics of the term 'indigenous peoples', in which many peoples struggle for their re-

definition as indigenous and the state deploys efforts to negate the indigeneity. In chapters 7 and 8 I discuss in detail the politics of the term ‘indigenous’.

The ‘territorial rights’ of indigenous peoples are also very contentious rights, although they have been recognised by ILO Convention 169:

Article 13

*1. In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of **their relationship with the lands or territories**, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.*

*2. The use of the term **lands** in Articles 15 and 16 shall include the concept of **territories**, which covers the total environment of the areas which the peoples concerned occupy or otherwise use.*

The international standards rely on the fact that territorial rights have a profound political meaning for indigenous peoples, because these peoples conceive of it as the support of their identity as nations. Thus, for indigenous peoples, land tenure is more than an economic issue: their relation to their territories possesses social, cultural and spiritual dimensions (Daes, 2008; Roldán, 2004), which are preconditions for their material and cultural survival (Sewptson and Plant, 1985; Satterthwaite and Hurwitz, 2005; Barsh, 2001; Stamatopoulou, 1994). Given this unique connection to their lands, governments must ensure an adequate legal protection (MacKay, 2002).

However, the ambiguity around the recognition of territorial rights for indigenous peoples relates to the fact that the term ‘territory’ has normally been regarded to pertain to nation-states, whereas the individual citizen holds just land entitlements or property rights. Usually, there is not a third option for those indigenous peoples that do not consider themselves as belonging to the dominant nation, and do not pretend to become an independent state, but rather require to be respected as peoples within the boundaries of the state.

Thus, what emerges is a politics of space or cartographic disputes regarding the indigenous claims to reinvent their territorialities and the state reaffirmation of their absolute power over indigenous vital spaces. Indeed, the cartography of the state usually considers indigenous territorial rights as land rights that can be legalised through private or collective proprietary arrangements or communal reserves or natural protected areas but not properly as indigenous territories, and in this way, it deepens capitalist social relations and the biased state understanding of indigeneity (Wainwright and Bryan, 2009). Thus, as the official cartography of the state still reproduces the capitalist logic by the commodification of the land and resources, the indigenous counter-cartography through their territoriality indeed has the potential to re-shape these capitalist relations and their colonial foundations (Sletto et al, 2013).

For this thesis, the territorial reinvention is a process by which indigenous peoples are proposing new institutional arrangements for the proper recognition of the territory in which they live. That is why in the Peruvian case (as in the case of many Latin American countries) the problem of territorial rights is not about the recovery of past

dispossessions, but of how the current indigenous institutional arrangements can be legally and politically recognised. For that reason, the debate about the moral foundations for territorial recovery is beyond the scope of this thesis (cf. Waldron, 2003 and his critics in Povinelli, 2011); firstly, because International Law has already established that indigenous peoples have a right to their ancestral territories, and second, because most indigenous peoples in Peru and Latin America are not claiming the recovery of their dispossessed territories but the proper ways in which their current land tenures must be recognised in legal and political forms.

It is important to note that self-determination and territorial rights establish a whole indigenous legality that involves issues of political rights, systems of justice, and intra-communal social and economic relations. In this thesis, when I refer to the processes of exclusion – inclusion, intercultural translation and *interculturalidad*, I primarily make reference to territorial rights and not other indigenous rights that are usually portrayed as ‘cultural rights’ and that are very contentious, such as the right to physically punish misconducts within the community. The focus on more general aspects of political philosophy and political economy (territoriality and self-determination) does not mean that specific divergences between collective rights and individual rights must not be addressed. Indeed, there are theoretical proposals to deal with these divergences through intercultural dialogues (Santos, 2007), but this is not within the scope of this thesis.

1.4.2. The meaning of indigenous self-determination

Indigenous peoples’ territorial claims have been historically based on their ‘sovereignty’, ‘autonomy’ or ‘self-determination’ as specific peoples or nations. These three terms have been used indistinctly by indigenous movements intersecting legal, political and epistemological/ontological claims in different contexts and times. In the United States, Australia and Canada, for example, the notion of ‘indigenous sovereignty’ has been used from colonial until post-colonial times, with some success (see 3.2.2); in Latin America the term ‘autonomy’ has been especially used in Bolivia; and today the term ‘self-determination’ is used in international instruments for the rights of indigenous peoples.

In this thesis, I use sovereignty to make reference to state power and self-determination or autonomy to refer to the right of self-government of the indigenous peoples or nations. To understand the boundaries of the state and the peoples it is important to briefly present the meaning of statehood and self-determination.

Statehood has been defined with respect to substantial and formal aspects (Craven, 2010). The substantial aspect refers to the sharing of cultural features, a territorial space, political aims and an identity, whereas the formal aspect refers to its legal configuration and recognition by the international community. The first aspect expresses the self-determination of nations or peoples, and the second aspect expresses the sovereignty as a capacity to rule within its territorial space and be protected and obliged by International Law. The definition of statehood with these two aspects served to differentiate the state as a political unit under International Law from those political communities that are not considered as subject of International Law (see references in Craven, 2010), such as indigenous peoples which during colonisation were regarded in some contexts as particular nations and in other contexts as simple tribes, but not as sovereign states.

After independence from Spanish, Portuguese and British empires, the new political units in America obtained statehood in formal aspects, and the substantial aspect of self-determination had to entail the construction of a 'nation' in which the indigenous nations had to be either included or excluded. Inclusion meant that they had to be adapted to the Western nation, and exclusion meant that they had to be eliminated in material or/and legal terms. This political tension that is rooted in colonisation is the inclusion/exclusion paradox of indigenous peoples that remains even today. The political dynamics have obliged a re-think of the notion of self-determination and a re-elaboration of legal and political arrangements, but the paradox has continued in subtle and profound aspects.

One first acknowledgment was that not all states had the two mentioned aspects in the same way. For sure, all of them enjoyed international political recognition and sovereignty, but inside these political units different peoples or nations were living. This fact was obscured by the legal and political constitution and normalisation of the states that were ex-colonies of Spain, Portugal and Britain, but it was not possible to obscure it during the so-called decolonisation era in Africa at the beginning of the last century. In this context, U.S. President Woodrow Wilson advanced the idea that self-determination was actually what determined sovereignty and statehood. Then, if there were people living their self-determination but submitted to an external sovereignty, they would have the right of independence (Craven, 2010).

Thus, around World War I, self-determination became a powerful political discourse (Philpott, 1995) from which statehood must be derived, being invoked by President Wilson as the right of the peoples to choose their own government, and by Lenin and Stalin as a strategy to further the goal of class liberation (Fromherz, 2008; Peang-Meth, 2002). With the creation of the United Nations (UN) 'the self-determination of peoples' was included in the founding principles of the UN Charter (Napoleon, 2005). After that, self-determination was used by many socialist and developing nations who strongly advocated it as a right to independence. In 1960, the UN General Assembly adopted the 'Declaration on the Granting of Independence to Colonial Peoples', referring to self-determination in relation to the colonial rule of formal character (Muehlebach, 2003). The 'peoples' in this Declaration were colonised peoples dominated by foreign powers. For them, self-determination meant independence from the colonial authority.

However, to derive statehood from self-determination was problematic because in the world there were many states formed by different nations. In this context, international scholars and policymakers differentiated between 'external self-determination' and 'internal self-determination'. The former refers to a situation in which a specific nation is dominated by a foreign power (during the decolonisation of Africa it was easier to identify those nations because they were called 'colonies'). The latter refers to a situation in which different nations coexist within a specific state, which has established a legal and political system for the inclusion and toleration of these nations (this is the situation of the former Spanish, Portuguese and British colonies of the XVI – XVII century).

That is why when international legal instruments and scholars refer to self-determination of indigenous peoples they are referring to 'internal self-determination', which does not mean secession but the right to maintain their ancestral territory and

their specific cultural and social norms as indigenous peoples within a specific state (Errico, 2007). This version of self-determination has been recognised in the Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, adopted by the UN General Assembly in 1966, which are the sources of Article 3 of the Declaration of the Right of Indigenous Peoples of 2007 (DRIP) that recognises all indigenous peoples' 'right of self-determination', although respecting the principles of political unity of the sovereign state (Article 46 of the DRIP) (Daes, 2008; Peang-Meth, 2002; Muehlebach, 2003).

This right of indigenous self-determination entails the social, cultural and spiritual control and administration of the territories and resources (including the protection of ancestral knowledge on biodiversity); freedom to organise the internal distribution of rights and duties; economic control of the production and redistribution of resources; a regulatory framework of relations with other socio-political entities; and jurisdiction over the territory (García, 2004).

The legal recognition of internal self-determination has been celebrated because it would make indigenous peoples subjects rather than objects of International Law, and it would avoid the dispossession of land, this being a crucial step towards reconciliation (Keal, 2003; Gilbert, 2007). Indeed, as Anaya (2009) says, the recognition of indigenous peoples as peoples with rights of internal 'self-determination' has been central in their demands at international level. Self-determination is a foundational principle that encompasses the constellation of indigenous rights.

However, in order to successfully negotiate this right with the states at the UN forums and obtain its recognition, indigenous peoples had to accept the human rights framework instead of the decolonial framework in which 'self-determination' was born, namely, as a specific collective political right rooted in the resistance against colonisation. According to Anaya (2009), under the human rights approach, indigenous nations, with their own social and political institutions, must be equal participants in all the levels of the government under which they live.

But it seems problematic to accept that self-determination can only be understood in terms of human rights and that it must be detached from an analysis of colonisation. As I discuss in chapter 3, self-determination and human rights, without being conceived as rights to secession, could be understood in non-Western terms. Indeed, indigenous peoples agree to internal self-determination although many of them do not want to be included within the state structure and logic, but to transcend the inclusion/exclusion paradox.

Therefore, in this thesis self-determination is conceived in legal-political and ontological/epistemological terms. Self-determination is a principle and a foundational right that supports the whole indigenous legality and economy. This right means the respect of the legal political and economic organisation of indigenous peoples within the state. In ontological/epistemological terms, self-determination means 'autonomy' as will be discussed in chapter 2. It is autonomy in relation to the state and the market, but not without the state and the market. Thus, autonomy constitutes the philosophical basis and self-determination the juridical and political form.

As I discuss in different parts of the thesis, this right and principle could be implemented with different legal devices, depending on the state institutional arrangements. Thus, the recognition of indigenous peoples in Latin American countries has been made through the recognition of specific 'indigenous communities' as in the case of Peru or 'indigenous *resguardos*' as in the case of Colombia. These spatial units of colonial legacy are composed by segments of indigenous peoples that were organised in specific areas during the colonial era. When Latin American multicultural constitutions recognise the right of self-determination or autonomy what they are recognising is the right of each community to govern themselves within that specific space (in political, economic and juridical terms). They are not recognising the right of self-determination of a whole indigenous nation, but the 'pluri-culturalism' by which indigenous peoples are autonomous units *within the national political community* (Van Cott, 2001).

This is a multicultural self-determination in which indigenous peoples are tolerated in their specific vital spaces insofar the state does not need that territorial space for extractive exploitation. This multicultural autonomy also works in cases of the 'Indians' reservations' of Brazil or the 'communal reserves' for indigenous peoples in voluntary isolation in Peru; they are respected and tolerated but the state always has the power to exploit natural resources within those areas.

Another kind of multicultural self-determination was implemented in the nineties in Bolivia through the processes of decentralisation. In those places in which indigenous populations were high, they could participate in the municipalities and indigenise a whole local political unit by governing according to their indigenous legality. But this kind of autonomy was embedded in the logic of a liberal state that assimilated indigenous traditional practices into the municipal governance system (Faguet, 2010).

Another institutional arrangement suggests that indigenous peoples must be recognised not as units within a nation but as different nations. It does not mean the denying of state sovereignty but the fact that they are not going to be assimilated to a dominant nation. The self-determination is not only of each specific community but of a whole indigenous people. The models of Federal indigenous nations proposed by Tully (1995) and the recent plurinationality implemented in Bolivia express this kind of self-determination and I discuss them in chapter 3. What it is important to note is that these different political arrangements entail different degrees of self-determination, and I consider that it is possible to properly recognise the right of self-determination in most of these cases if there is a real process of *interculturalidad* (see chapter 4) and a recognition of self-determination in all its dimensions (not only legal, but also economic, ontological and epistemological).

1.4.3. The meaning of the political

It is important to clarify the meaning of 'the political', which is extensively used in this thesis. There are several perspectives around this notion: from Carl Schmitt's (1932) initial accounts on the definition of political friends and enemies to Chantal Mouffe's view (2005) of the political as a space for agonistic political relations. I analyse these views and how indigenous peoples redefine a new political space when I discuss in chapters 2 and 3 the nature of indigenous politics from the perspective of radical democratic theorists, post/neo Marxists and decolonial thinkers. What I would like to

highlight now is that in spite of its complexity and divergences, indigenous politics has the potential to enlarge the political and to invert the current political imagination.

In formal terms, the political is the ontological and epistemological space defined by the encounters between the processes of policy (or governing), and the processes of politics (emancipatory practices) (Rancière, 1992). It means to me that the political is marked by what is actually regulated and governed by national and global governance (private and public social and legal regulations), and what it is possible to achieve with political contestations. Thus, on the one hand, the policy aspect of the political defines institutions, laws and policies that establish the space in which the politics takes place. On the other hand, the politics expresses the practices that constantly confront the policy and in this way it reconfigures the boundaries of the political.

It does not mean that actually there is no politics inside the policies because the very process of policy-making and implementation of policies entails an ideological orientation. It does not mean that politics are not able to become policies and in this way it institutionalises a political interest. What this analytical difference suggests is that politics and policy are constantly interacting and configuring a space that defines our political imagination.

The problem is that what is currently understood by ‘the political’ seems to have very rigid boundaries that deny any political imagination that is not liberal, capitalist and Western. I will explain in chapter 2 the relations between liberalism, capitalism and Western modernity and how they are deeply connected to coloniality understood in its ontological, epistemological and regulative dimensions.

Indeed, one of my main arguments is that the encounters of the Awajun indigenous peoples with liberalism and capitalism help us to understand how indigenous politics cannot be either assimilated or excluded from the logic of liberalism, capitalism and the modernity paradigms that support them. By proposing a politics that transcends this dialectic and that shows (an)other modernity, indigenous politics is actually proposing an enlargement of the political, and the possibility of inverting the current political imagination.

1.4.4 The meaning of dispossession

Another key notion in this thesis is ‘dispossession’. The term does not refer uniquely to land dispossession, it encompasses the dispossession of health, habitat, way of life, and gaining from resources within indigenous territories. This is the way in which Bebbington and others develop the notion from David Harvey’s accounts on accumulation by dispossession (Bebbington et al., 2008; Bebbington and Humphreys, 2011; Gordon and Webber, 2008). These different kinds of dispossession could entail displacements, but not in all the cases; it might imply what Nixon (2011) calls ‘displacements without moving’.

I would like to further this conceptualisation and show how there could be also a *dispossession of identities* when the state embraces the modernising and developmental perspective on indigenous territories, and imposes on the people an identity to attach them to major developmental goals. This is a way to deny indigeneity and one of the

most profound and subtle kinds of dispossession directed to facilitating or legitimising the material dispossessions.

This broad notion of dispossession is related to violence. Violence here is not only an open and spectacular violence that appears in the context of huge environmental disasters, protests and mobilisations. I also conceive violence as structural violence and slow violence (Nixon, 2011). In my view, structural violence refers to the legal, economic and political conditions, institutional settings and discourses that promote and normalise dispossession, such as those legislations and discourses that facilitate the massive taking of indigenous land or the denial of indigeneity; it is a legal and ontological violence well-known by indigenous peoples (see chapters 3 and 6).

But there is also a slow violence that, while it could be sourced in structural violence, cannot be analytically understood in terms of normalisation and stagnancy (unlike structural violence) because it describes issues of gradual movements and change: it is “a violence that occurs gradually and out of sight, a violence of delayed destruction that is dispersed across time and space, an attritional violence that is typically not viewed as violence at all” (Nixon, 2011: p. 2).

As I discuss in chapter 6, whereas the *Baguazo* is seen as a clear example of violence in its spectacular form, it is indeed part of a constant slow violence deployed against indigenous peoples and the environment, which involve ecological pressure on the forests and resources and no visible economic and cultural impacts on indigenous communities. Thus, I am analysing dispossession and violence as an on-going process not as a specific event.

The notion of dispossession developed in this research helps to comprehensively understand the relation between indigenous peoples’ territorial rights and the politics and policies for extractivist activities. Indeed, in Peru, the different types of dispossession have been made visible in the last years: the attempts of dispossession of land and territories (the protest in the Amazon against the legislation directed to ‘facilitating’ the selling of indigenous land); the dispossession of resources such as water or grazing (protests against huge mining projects like Tambogrande, Majaz and Conga); the dispossession of health (in the case of Doe Run in La Oroya); the dispossession of the real value of the mining activity (protests for adequate economic compensations derived from mining, as in the Bambas and Tintaya projects); the dispossession of the identity of Andean indigenous peoples (in particular the case of the Cañaris, whose indigenous identity has been denied by experts and governmental officials). In the following chapters I use these different cases as examples to better understand and locate the Awajun political contestation.

1.4.5. The meaning of extractivism

In this thesis the word extractivism is fundamental to understanding the encounters between indigenous peoples and political economy. In formal terms, extractivism refers to economic activities that remove huge amounts of natural resources (mainly minerals and oil but also forestry, fishing and other resources) from ‘developing countries’, usually in areas inhabited by poor or indigenous communities, and in general for their exportation as raw materials (Acosta, 2013). Extractivism is often connected to

important development and infrastructure projects, such as the construction of dams, highways, etc. settled to facilitate the extractive activities.

These economic processes define the political economy of many countries in the Global South and explain their economic dependence (see chapter 4). But most profoundly, this political economy expresses the permanence of a colonial model of accumulation based on dispossession. Indeed, in substantive terms, extractivism is the economic engine of coloniality because it is profoundly embedded in the ontological and epistemological paradigms of Western modernity and at the same time it reinforces them. Thus, the conceptualisation of nature as resource for appropriation, economic growth as an endless process for the development of the 'nation state', and accumulation as a natural activity of all human societies are the premises of extractivism that are often challenged by indigenous peoples.

This extractivism, which is constantly appropriating the resources, vital energies and spaces of indigenous peoples (what I call the capitalist expansion), is presented today as a crucial means for 'economic development'. It also implies discourses, laws and policies within the legal and political framework of 'multicultural liberalism'. Thus, the convergence between these two aspects (the economic and the legal/political) composes the regulative aspect of liberal capitalism.

Although neoliberalism has been important in facilitating mining and oil investments in recent decades (Bebbington et al, 2013), it is only one historical stage in the continuous process of coloniality, indeed, coloniality and extractivism remain in so-called post-neoliberal regimes (see chapter 4). By neoliberalism I mean the Reagan/Thatcher political and economic turn in the eighties based on the Chicago School of Economics. This school (a synthesis of neoclassical economics and the Austrian school of economics) strongly advocated the reduction of state economic activities and social policies, and the supremacy of the market for achieving individual wellbeing and social goals (Glinavos, 2008). The result of the neoliberal and technocratic hegemony was the decline of the Welfare state and the emergence of the so-called 'competition state' (Horsfall, 2010; Fougner, 2006). These new states are characterised by competing in a 'race to the bottom': in order to attract foreign capital, they tend to reduce protective standards in labour, tax, environmental protection, and financial regulation (Pistor, 2002).

Even though in Latin America, neoliberalism has been challenged by the so-called 'post-neoliberal regimes', the extractive policies of these regimes are deeply embedded in state structures with the argument that those activities provide economic growth, employment and large revenues to support social programs. This is because extractivism was not born with neoliberalism but with colonialism. Indigenous rights are not threatened merely by neoliberalism but by coloniality of power, namely, the political economy of extraction and the legal mechanisms that allow it.

1.5. The research questions

The main research questions that this thesis is going to answer are:

1. What are the tensions and the nature of the conflict between indigenous peoples' territorial rights and liberal capitalism (expressed in multiculturalism and economic development)?
2. In what ways can indigenous self-determination and territoriality articulate an alternative to liberal capitalism?
3. What would be the adequate epistemological framework to theorise indigenous politics and legality at present?

My specific research questions are the following:

1. What actions are undertaken by the Awajun indigenous people to accept or reject policies framed within economic development?
2. Is it possible to conciliate indigenous peoples' territorial rights and liberal multiculturalism? What is the nature of the contradiction and antagonism between them?
3. Is it possible to conciliate indigenous peoples' territorial rights and economic development? What is the nature of the antagonism and contradiction between them?
4. In what ways do the Awajun struggles to defend their territory and livelihoods illustrate the dynamics and processes of contention between indigenous self-determination and policy framed within liberal capitalism?
5. How are liberal capitalist concepts such as multiculturalism, development, human rights or property examined from indigenous politics and legality?

1.6. Outline of the Chapters

In chapter 2, I explore the nature of indigenous politics and global liberal capitalism by analysing the foundations of liberal capitalism and Western modernity and its dark side: exception, dispossession and coloniality. I also explain the decolonial approach as the theoretical framework of this thesis and the counter-hegemonic and autonomist strategies of indigenous politics.

In chapter 3, I focus on the tensions and conflicts between indigenous territorial rights and liberal legality by analysing the processes of inclusion/exclusion deployed by the state. I focus on the legal mechanisms implemented for these purposes by International Law during the colonial era, the first decades of independence of the new republics, and the current era of multiculturalism. Then, I critically engage with the debates on the foundations of multiculturalism and its implementation in Latin America in the nineties. Finally, I discuss the possibility of using the multicultural liberal framework of human rights to favour the political agendas of indigenous peoples.

In chapter 4, I focus on the tensions between economic development and indigenous territorial rights by exploring the way in which extractivism is embedded in the political economy of the countries of the Global South. I evaluate the attempts to transform indigenous communal tenure into private property, the way in which indigenous peoples are proposing *Buen vivir* as an alternative to development and how it is interacting with post-extractivist agendas. Finally, I explore the meaning of *interculturalidad* as a mechanism for translating indigenous perspectives into state policies.

In Chapter 5, I develop the research methodology of the thesis, its epistemology and the research design that includes the methodological approach (participatory action research), research methodology (qualitative research) and methods (extended case study, interviews and participatory observation). Finally, I explain the way I undertook the data analysis and the ethical issues of the research.

In chapter 6, I analyse the *Baguazo* as a consequence of a historical structural violence (legal and ontological violence exerted in the different stages of legal indigenism) and as part of the slow violence exerted by the state and companies against indigenous peoples. I explore the role of the legality to exclude and include indigenous peoples from the Andes and the Amazon, the legal notion of the ‘community’ and the processes of decomposition and reconstruction of indigenous organisations. Finally, I analyse the Awajun political ontology and the way they articulate their political visions in contentious ways and how they are politically organised for their agenda of self-determination and territorial rights.

In chapter 7, I focus on the legal and political consequences of the *Baguazo* and the current conflicts between Awajun people and mining and oil companies. I explore the recent institutional changes in the intercultural and environmental government departments, the way policy-makers view development and the relation between indigenous peoples and the state. I also critically analyse the literature that understands socio-environmental conflicts as an issue of policy institutional design for distribution and political participation instead of political ontology (territoriality, self-determination), and the contradictions within the state in the recognition of indigenous rights and the implementation of extractive policies.

In chapter 8, I explain fundamental questions that the *Baguazo* poses and which remain unsolved: First, I focus on the politics of the term ‘indigenous’ in Peru, the attempts of deleting or re-affirming indigeneity and the emergence of a process by which *mestizos* and non-indigenous peoples are engaging with indigeneity. I also discuss the structural (national and global) and ideological constraints within the state on undertaking proper processes of intercultural dialogues and on implementing the *Buen vivir*. Finally, I explain how indigenous politics is proposing a platform for political articulations to overcome the above mentioned constraints and how this politics proposes an enlargement of the political and the inversion of the political imagination.

Chapter 9 is the conclusion in which I present a summary of the research aims, questions and general conclusions, the theoretical and empirical contributions, the policy implications and the limitations and future research agendas.

Chapter 2: Indigenous politics: self-determination in front of global capitalism, the liberal state and Western modernity

2.1. Introduction

In this chapter I explore the theoretical debates on the foundations and discourses of indigenous politics in relation to globalisation and the state in order to identify the ontological and epistemological aspect of the conflict between the politics of indigenous territorial defence and extractive activities.

In the first part I analyse how colonialism is embedded in Western modernity and in the development of liberal legality and the capitalist economy. I evaluate the potential and gaps of the critiques provided by Marxism and post-structuralism against liberalism and capitalism, and those from political philosophy against political liberalism, in order to assess the egalitarian and libertarian principles of the Western modernity project.

In the second part I explain the decolonial perspective as the theoretical framework of this thesis. I focus on the concept of colonality in order to explain how modernity has entailed the exclusion or the concealment of indigenous ontologies and epistemologies through colonial mechanisms based on racism and eurocentrism, and how decolonial epistemologies and ontologies confront this pattern. I also analyse trans-modernity and intercultural translation as conceptual tools for promoting global dialogues.

In the third part I focus on the nature of globalisation and indigenous movements. I focus on different theories that try to explain critically the nature of globalisation such as global governance, imperialism, empire and global colonality. Then, I explore the debate on new social movements and radical democracy and its bias in understanding indigenous social struggles. I also analyse the debate about struggles for recognition and redistribution, and how these struggles have a different meaning for indigenous peoples. Finally, I discuss the nature of the indigenous claims as counter-hegemonic or autonomist projects, and their relation to the state.

2.2. The violent foundations of liberal capitalism

The current global scenario might be explained as the process of worldwide expansion and rule of liberal capitalism (the conjunction of capitalist political economy and liberal legality) rooted in the modernity project. Liberal capitalism constitutes the regulative dimension of this order, and modernity its ontological and epistemological dimension. Each of these elements has a dark side: dispossession/exploitation for capitalism, exception for liberalism and coloniality for modernity. In spite of the correlation, liberalism, capitalism and colonialism are usually seen as disconnected. Thus, capitalism's origins are identified in 16th century England, when landlords decided to create a market for land through leasing contracts (Kiely, 2005); whereas liberalism is usually conceptualised as the opposition and overcoming of monarchism/feudalism (in political terms) and mercantilism (in economic terms) thanks to the Enlightenment thinking and glorious political events (Reformation and French revolution), constituting the model for the 'civilised world' (Hayek, 1960).

These usual accounts omit the fact that colonisation is a foundational element of what Quijano (2000) calls the world pattern of capitalistic power, because this pattern was developed thanks to the dispossession and exploitation deployed by colonisation (Hall, 1992/2013; Hardt and Negri, 2000). Furthermore, the theoretical foundations of political liberalism were written at the same time as colonisation, they emphasise property rights and freedom of contract, adding juridical/political justification to the triad: capitalism-colonialism-liberalism.

The foundations of liberal rights during colonisation meant the negation of the rights of those colonised by the affirmation of the rights of the colonisers (Lander, 2000; Fine, 2009). For John Locke, in his *Second Treatise of Government*, the main coloniser right was individual property understood primarily as a right of the human beings over themselves and freely exerted by occupying or working on nature: individual property was the constitutive and regulative form of the liberal order (Hardt and Negri, 2009). Locke thus saw appropriation as the foundation of property right and assumed that it did not damage others because there was enough land on earth (Olivecrona, 1974). Thus, America was considered an empty space because its population did not respond to the liberal framework. Indeed, Locke strongly defended the colonial project; for him the expansion of colonisers' private property was the inevitable result of European reason and industrial development (Arneil, 1994; Stewart-Harawira, 2005).

Furthermore, although 18th and 19th century liberal foundational texts defined freedom and equality as opposed to slavery, they generally criticised ancient slavery and omitted the actual slavery implemented by their regimes (Hardt and Negri, 2009). For example, although the Declaration of the Rights of Man of 1794 was supposedly universal, so it was invoked by Haiti's revolutionary slaves, the slavery was re-imposed by the French State in 1803. In fact, slavery was completely integrated into modern capitalist production: "It is slavery which has given value to the colonies, it is the colonies which have created world trade, and world trade is the necessary condition of large-scale machine industry" (Marx in Hardt and Negri, 2009: p. 73). Hence, the historical process that consolidates and naturalises capitalist production and the liberal order had at the same time a colonial/imperial foundation (Lander, 2000).

Marx was critical of liberalism and capitalism, blaming them for being complementary in the process of labour commodification. Liberal legality and human rights declarations obscured the fact that behind the abstract category of a citizen entitled with universal rights, there were concrete human beings who were owners or workers (Rancière, 1992). Nonetheless, for Marx the expansion of capitalism would promote a dynamic process of development across the world. For him, England had to destroy the old Indian society, then implement the material foundations of capitalism and finally overcome it (Kiely, 2005). Thus, Marxist critique is also embedded in modernity principles. Marx proposed a universal formula to human oppression (socialism/communism) from the epistemic and social position of European proletarian, ignoring ontological and epistemological diversity, and the multiplicity of power relations (Grosfoguel, 2007). Furthermore, he celebrates modernity as progress and underestimates non-Western and non-modern critiques (Hardt and Negri, 2009). With the exception of the first generation of the Frankfurt School and some post-modern Marxists that criticised modernity within the West, Marxist tradition (structuralism, autonomism, etc.) has not questioned modernity's paradigms either, as I show in the next sections.

The critique of modernity is also lacking in the debate on modern political liberalism. According to John Rawls' redefinition of liberal theory, the foundation of the democratic society is a hypothetical bargaining and consensus of free and equal individuals who are abstractly located in an original position. Rawls (2003) asserts that the consensus achieved from this position must fulfil three principles: 1) equality in the recognition of rights and freedoms (what he calls 'primary goods'); 2) equality of opportunities for each individual to develop their own capacities; 3) the 'difference principle', which means that the state can exceptionally promote some social and economic inequalities in order to help the disadvantaged. This system would express what he calls 'justice as fairness', through a democratic regime that is legitimated by political debates or public reasoning. Rawls' thought is deeply founded on classical liberalism, specifically, the social contract tradition (Rousseau, Locke) and Kantian ethics against utilitarianism (Sandel, 1998).

Rawls' analysis has been criticised by different approaches. Nozick (1974) criticised the 'difference principle' because there would not be justification for state redistribution if property rights have been acquired legitimately. Sen (2009) criticised the transcendental framework focused on how a just society should be, opposing a comparative capabilities framework focused on real unjust situations. Sandel (1998, 2009) criticised the liberal pre-eminence of the rights over the common good, opposing 'virtue ethics' judgment on the content of the ends that rights promote. Communitarians also criticised the pre-eminence of rights, but emphasising the relations of identity and community (patriotism) as the foundations of a republican regime (Taylor, 2003).

However, rather than challenges, these approaches constitute complements or reforms to liberalism. For example, Rawls and Nozick share their opposition to utilitarianism and their ethical perspective is rooted in the social contract tradition (Sandel, 1998); their differences are between extreme liberalism (libertarianism) and welfare liberalism. Similarly, Sen's critique remains rooted in liberalism. He also does not accept a comprehensive view of the good life, and strongly relies on public reasoning to achieve justice (Deneulin, 2011). Regarding virtue ethics, although it emphasises common good over individual rights, it still complements liberal self-regulation, for example, in the case of fair trade or corporate social responsibility, liberalism provides the structure (consensus, freedom) and virtue ethics the substance (be responsible). Finally, communitarians do not see themselves as opposed to the liberal paradigm, but as a complement to maintain liberal democracy; the communitarian challenge therefore is not directed to replace liberal justice, but to improve it (Gutmann, 2003).

Habermas' critique (1995) is also limited. He rightly criticised the Rawlsian consensus and other hypothetical assumptions as tools to justify the institutionalisation of society, however, by emphasising the communicative reason and action (Habermas, 1984) to reach real and comprehensive understandings for the whole democratic society; he shares with Rawls the pretention to maintain a social order through a transcendental formalism. Habermas's communicative reason and action is a process directed to social actor's interactions in the social order without challenging its underlying foundations, thus accepting and reinforcing its constitutive fundamentals (Hardt and Negri, 2009).

A most challenging critique of liberalism has its roots in Carl Schmitt. Schmitt's decisionism (1932/2004) criticises liberal legality for being too formal, so it excludes

considerations of social and political context. Since all Law is situational Law (Schmitt, 1922/1985), a norm always requires the decision of an authority to determine the concrete application of the rule, and in this operation the decision-maker could decide even beyond the rule. Thus, judges hold an intrinsic power to rule beyond the Law when they have to decide hard cases, and the sovereign holds an intrinsic power to rule beyond the Law when he has to administer the society (in situations of political instability) through the state of exception (a legal prerogative of the government to suspend the rights ensured by the Law). This politics is the content of the *political*, which for Schmitt is the potential to establish the boundaries of the antagonism between political allies and enemies.

Then, for Schmitt liberal legality has two options: either it is completely and naively neutral so it does not define the boundaries of the political and in this way it might be overcome by antagonist and totalitarian projects (for example, communism); or it is only rhetorically neutral and substantially totalitarian because by defining the political it radically excludes any political antagonist. This view of the liberal order as based on dissent instead of consensus has generated different strains of critique such as Rancière's (2006) ethics of dissent as the real basis of democracy, the theorists of radical democracy that see democratic processes as agonistic relations (Laclau and Mouffe, 2001), or Agamben's view (1998) of the liberal order as container of totalitarian principles.

It could be said that Marx's critique was directed primarily to unfold the dark side of capitalism (accumulation by dispossession and exploitation), and Schmitt unfolded the dark side of liberalism (exception and exclusion rooted in the very essence of liberalism). However, there is no a comprehensive critique of liberal legality and capitalism because it is usually missing a critique of modernity.

The usual account of modernity is that it was born in the 18th century thanks to Enlightenment thinking (and its proposals of objective science and universal morality), the French revolution and the Reformation, which allowed Hegel to develop the main principle of modernity: 'individuality' as a model of self-relation (Habermas and Benhabid, 1981; Habermas, 1987). This principle was the basis of Western rationalism, which for Weber led to a rational process of disenchantment and disintegration of religious worldviews (Habermas, 1987). Since the 20th century tragedies (wars, genocide, economic crisis and so forth) have affected modern aspirations, the usual theoretical account divides the debate between those who want to complete the modernity project, and those who deny it, the 'anti-moderns', or post-moderns.

For Habermas (1987) the anti-moderns question reason rooted in the principle of individuality because it has been used to hide different forms of exploitation, degradation and alienation on behalf of rationality. For example, Horkheimer and Adorno (1944) saw modernity inherently related to its opposite, anti-modernity (expressed in irrationalism, myth, domination, and barbarism), in a dialectic relation that would inevitably lead to its self-destruction (then, Hitler and Stalin's regimes are not anomalous, but a symptom of the nature of modernity itself) (Habermas, 1987). Nowadays, anti-modernity is usually called postmodernism, which has been criticised for being nihilist, relativist and functional to global capitalism (Jameson, 1991).

But the critique of modernity is a necessary step to critically analyse liberalism and capitalism and how they relate to indigenous peoples. The ontological and epistemological foundation of this project (rationalism and universalism), however, can be more fruitfully examined from the perspective of those who have been dispossessed, than from postmodern intellectuals. The decolonial critique is relevant in this task.

2.3. Coloniality, indigenous peoples and trans-modern dialogues

Decolonial thinking proposes a key critical theory to understand the tensions and contradictions between liberal capitalism and indigenous territorial rights. In this section, I explain decolonial theory as the theoretical framework of this research, emphasising crucial elements of this theory, the debates around them and their importance in the understanding of indigenous politics in relation to extractive policies.

2.3.1 The coloniality of power

Decolonial thinking is an original type of critical theory that examines how the power relations that constructed the indigenous as an inferior race and created a global pattern of accumulation during colonisation, remain in force in the current global era. It took form through intellectual exchanges between Latin American scholars located in the North and in the South, whose reflections on global injustices, dependency and cultural studies showed a theoretical originality in relation to Wallerstein's world system theory and post-colonial studies. Although the movement is not uniform, and many scholars have engaged (and currently engage) with decolonial ideas with different emphasis, its main concepts are fundamental for studying the processes of colonisation and resistance.

The first premise of the decolonial approach is that the basis of the epistemology and ontology of the modern project is constituted with colonisation in the 15th century rather than the detachment from the Church rule, the secularisation, and the consolidation of bourgeois reforms and revolutions in the following centuries (Dussel, 1994; Quijano, 2000). The main principles of the modernity project (rationalism and universalism in Descartes, Kant and Hegel) cannot be explained without the European expansion, the racial classification and the colonial justifications. Thus, with colonisation a new model of power is deployed, what Anibal Quijano calls the "coloniality of power" (2000): race constituted the basis on which European ontology and epistemology was constructed, what justified ethnic classification, consequently the economic division of the world and the legal and political justifications for the extension of the new order.

Coloniality of power exerted two global processes: a global process of accumulation and a global process of naming. European powers exerted a global process of accumulation through the control of colonised labour and products, which allowed the richness of the North at the expense of the South (Stuart Hall, 1992/2013). The global process of naming was deployed through the control of the labelling process to determine race superiority and inferiority (Quijano, 2000). Thus, the new identities allocated (Indians, blacks, mestizos) were represented as inferiors to European identity. This view shares Fanon's (1983) observation of how the indigenous is labelled not only as unable to have ethics but as a negation of ethics, which supported the hegemonic position of European culture, legality and economy.

According to decolonial perspectives, even though formal colonialism ended up in legal and political terms, coloniality remains in our societies because power is still distributed around a colonial ontology and epistemology, and consequently the regulative aspects of the society (the way in which social and economic relations are organised) still respond to this logic. The works of Rivera Cusicanqui in Bolivia (2010) or Stefano Varese in Peru and beyond (2006), among other scholars, have shown how the post-colonial liberal state maintains colonial patterns vis-à-vis indigenous peoples.

Indeed, as I will show later, the political economy of extraction is the economic engine of coloniality and liberal legality has consolidated the different processes of indigenous dispossession. But now it is important to observe with more detail how the epistemological and ontological aspects of coloniality work today.

2.3.2 Coloniality of knowledge and being

The decolonial perspective also seeks to re-valorise and re-invent the knowledge hidden by Western modernity in a project directed to confront what is called the coloniality of knowledge. The colonial difference produced by the ‘conquest’ of America was crucial for the production and formalisation of knowledge functional to the epistemic necessities of capitalism: the measurement, quantification and objectification in order to control resources and populations (Quijano, 2000). This knowledge was produced in the epistemic location of the colonisers. Castro-Gomez (2005) explains how Descartes developed his thought in Amsterdam when Holland was a key global actor, allowing him to propose an absolute and universal way of thinking. Thus, the myth of a rational subject self-generated without spatial-temporal location in world power relations, or the point-zero, is the beginning of the epistemological myth of modernity: abstract universalism (Grosfoguel, 2007). One century later, Kant organised the categories of space and time as inherent to all ‘men’, as a-priori universal category in order to produce knowledge to be recognised inter-subjectively as true and universal. However, for him the transcendental reason is not characteristic of all human beings, but only for the European ‘men’ (Spivak, 1999; Grosfoguel, 2007). Hegel, celebrated by Habermas as the first philosopher of modernity, followed the path of superiority traced since the conquest, locating Europe as the centre of human history denying any intellectual capacity to Africa, Asia or America, so his principle of ‘individuality’ was indeed the European superiority of the Spirit (Dussel, 1994).

The coloniality of knowledge is the consolidation of this Eurocentrism as a scientific common sense. Western forms of knowledge developed for the understanding of society become the only valid, objective, universal model of knowledge. Its categories, concepts and perspectives are not only universal categories for the analysis of any reality, they are normative propositions that define the ‘must be’ for all world peoples (Lander, 2000).

Then, the naturalisation of Western knowledge became the pattern to evaluate other societies (Hall, 1992/2013) and detect their ‘lacks’ and ‘underdevelopment’ (Lander, 2000). Thus, liberal society is understood as the most advanced expression of its own and universal historical process, it shows the only possible future of all cultures and peoples: The different discourses that have legitimised its civiliser-normaliser mission

(evangelisation, civilisation, modernisation, development, and globalisation) are all based on the premise that there is a superior and normal pattern (Lander, 2000).

Mignolo (2011) proposes a decolonial epistemology to confront coloniality of knowledge. It entails a rejection of the two alternatives offered by Western knowledge: to accept the inferiority of non-Western knowledge or to assimilate it. According to Mignolo (2011), the denial of these alternatives constitutes epistemic disobedience, it is the first step to delink from imposed epistemologies and revalorise the systems of thinking and living that have been denied by Christian theology, secular philosophy and modern scientificity.

Consequently, decolonial epistemology means “learning to unlearn”, in order to disconnect our thinking from the imperial/colonial reason (Mignolo, 2007: p 121). Then, it is possible to construct knowledge from the experience of the oppressed groups instead of just importing knowledge, as the oppressed groups were not able to conceptualise and interpret their own realities (Grosfoguel, 2009).

There are two usual critiques of decolonial epistemology: fundamentalist rejection of all Western knowledge and over-emphasis of the location of knowledge (see Domingues, 2009). But decolonial epistemology does not mean a fundamentalist rejection of all Western categories but the acknowledgment that there are different theoretical frameworks that must be grasped in their own terms, only then it is possible to start a dialogue and exchange. It does not reject the use of Western categories but to think those categories from non-Western epistemologies, exerting a ‘border thinking’ (Mignolo and Tlostanova, 2006; Grosfoguel, 2006). Border thinking allows a redefinition of Western concepts and devices such as democracy, human rights, or economic relations. For example, Grosfoguel (2009) argues that the Zapatistas, instead of being anti-modern indigenous fundamentalists, accept the notion of democracy but redefine it according to their practice and knowledge in the following terms: *commanding while obeying* or *we are all equals because we are all different*¹. Thus: “What seems to be a paradoxical slogan is really a critical decolonial redefinition of democracy from the practices, cosmologies and epistemologies of the oppressed...” (Grosfoguel, 2009: p. 27).

Decolonial epistemology does not reject Western location either. It distinguishes the epistemic location from the social location, in the words of Grosfoguel: “just because one is socially located on the oppressed side of power relations, does not automatically mean that he/she is epistemically thinking from a subaltern epistemic location” (Grosfoguel, 2009: p. 14). Thus, the Western and non-Western (or the North and the South) do not mean geography, but the geo-politics of knowledge (Mignolo, 2007) which is profoundly contextual, but at the same time is able to transcend its own boundaries.

The coloniality of knowledge is connected to the coloniality of being (see Maldonado-Torres, 2007), namely, how the West has conceptualised the human: a rational individual who sees the outside as composed of subjects and objects. In many indigenous peoples’ ontologies there is no separation based on individuality, but a holistic perspective based on relationality. For the Aymara, for example, it involves

¹ These are well-known Zapatista principles.

seeing the present and the past as interrelated. Each individual is inserted in a multi-dimensional world in which being well is relational; it is the outcome of balanced relations with the family, community and other human and non-human entities (Blaser et al, 2010). In chapter 6 I will explain how this ontology is similar to the Awajun cosmological world.

Indigenous ontologies have been obscured on behalf of ‘civilisation’ and ‘progress’. But indigenous ontologies are alive. For instance, De la Cadena (2010) has shown how through the discourse of earth-beings in social protests indigenous peoples dispute the monopoly of science to define ‘nature’ as resource, proposing the idea of ‘nature’ as being, overcoming in this way the Western universal ontology.

2.3.3. The projects of trans-modernity and intercultural translation

Coloniality is the dark side of modernity because the ontological and epistemological premises of modernity have imposed an implicit racial superiority and eurocentrism as universal truth, disrespecting other ways of being and knowing.

Today we have three options regarding Western modernity: 1) to see modernity as an incomplete process that must be expanded to fulfil its promises (Habermas, 1987; Giddens, 2003; Beck, 2000); 2) to see modernity as fundamentally wrong because it encompasses the irrationalism of its dialectic (Adorno, Horkheimer), or because it hides totalitarian principles rooted in the very beginning of human civilisation (as Agamben via Schmitt), or because its premises of universalism, rationalism and objectivity are inconsistent, irrational, contradictory and are discursively appropriated by those in power (post-structuralists) particularly by the ‘European reason’ (in post-colonial studies); 3) to see modernity as Western modernity that has covered and attempted to destroy other modernities rooted in local histories, so what is required is to re-invent indigenous ontological and epistemological foundations not to idealise the past but to construct a decolonial alternative.

The last option is not a celebration of Western modernity nor an attempt to finish its project, this is neither a dialectic of anti-modernity against modernity nor a mere deconstructive critique, but first of all the radical recognition of the different Other who can neither be excluded nor subsumed by the logic of modernity, but must be respected.

Sharing the idea of coloniality of power, Hardt and Negri propose ‘alter-modernity’, but trying to equate all anti-capitalist struggles as queer and autonomous (see 2.4.4). Dussel (1994), in contrast, proposes ‘trans-modernity’, which I suggest is a key concept to theorise decolonial and colonial encounters. Dussel (1994) does not criticise reason as such (as post-moderns do) but the dark side of reason, the colonial reason. Thus, he does not deny the rational basis of universal rationalism, but its irrational moment as a modern myth that justified colonisation as the price for progress and civilisation. He asserts the Other’s reason by proposing a space of communication in which all humans can participate as equals, but at the same time respecting their alterity. Trans-modernity entails thus a radical recognition of the Other in order to construct bridges of communication.

This perspective is similar to Santos’s project of social emancipation and epistemologies of the South (2004). This project proposes the sociology of absences,

sociology of emergences and intercultural translation. The sociology of absences consists in amplifying the present by adding to the existing reality the knowledge and practices hidden or denied by Western modernity; the sociology of emergences enlarges the present by adding to the existing reality new alternatives and aspirations derived from the re-valorised knowledge and practices. Intercultural translation is the procedure that allows intercultural conversations and exchanges among the proponents of these knowledges and experiences in order to evaluate them and identify possible alliances and articulations.

The decolonial perspective and Santos' social emancipation are not simple reactions against Western modernity; these are radical critiques that also reconstruct Other's ontologies and epistemologies and then propose a dialogue through trans-modernity or intercultural translation. The communication at this stage, of course, does not mean consensus because there are profound differences that must be recognised.

The usual critiques of the decolonial perspectives are unsatisfactory: (1) a reductive view of modernity, in which only domination is relevant; (2) the idea that only what is not modern is valuable in Latin America (Domingues, 2009). These critiques tend to see indigenous epistemologies and ontologies as the exaltation of the exotic in a dialectical opposition to the modern. Thus, it confuses the critique of modernity with the denial of modernity. According to Domingues (2009: p. 124) indigenous social movements in Latin America "may carry out some changes in modern epistemic frameworks, but ... this is done in close connection with episodic, contingent modernizing moves that build specific paths within modernity..., denying modernity... is to deny participation in the modern polis".

The decolonial perspective does not argue that indigenous peoples are isolated from the 'modern world', or that they do not use modern elements such as human rights, technology, markets or cultural exchanges. For that reason, Galindo (2010) proposes the term 'indigenous modernity' to express the indigenous appropriation of some modern features without losing indigenous principles of social organisation. These modern features have not only been important for advancing their demands, many times their use has been the only option available for them.

In addition, it should be acknowledged the importance of the internal critique of modernity in the tradition of critical thinking and postmodernism. Although it is true that many times this perspective is Eurocentric, it is very important that decolonial thinking recognises its relevance. Thus, the main task is bridging the gap between internal and external critiques (Vázquez, 2011). Both can be performed together only if they are recognised as two epistemic fronts against modernity, not as one integrated into another: only from a mutual recognition of values and virtues of both systems, which entails a real understanding of the rights of indigenous peoples, and by dignifying and valuing their identity, is it possible to seek a dialogue and harmony between indigenous and non-indigenous peoples (Yampara, 2010).

The decolonial perspective that I am advancing in this thesis does not suggest that indigenous politics is uniform. Indeed, there is certain plurality within indigenous struggles, but what it is important to recognise is that within this plurality there are other epistemologies and ontologies different from Western modernity and that, derived from them, there are other ways of social, legal and economic organisation that cannot be

labelled as un-civilised or under-developed. After this radical recognition we can start a real trans-modern dialogue and intercultural translation between different rationalities.

2.4. Indigenous politics beyond recognition and redistribution

In order to elucidate the ontological and epistemological basis of indigenous politics, in this section I analyse how indigenous peoples politically engage with globalisation, social movements and the state; how these notions could be reframed from a decolonial perspective, and the way in which indigenous strategies and aspirations in terms of autonomy or counter-hegemony emerge today.

2.4.1. Global coloniality and the debate on globalisation

Since indigenous movements are considered as part of ‘new social movements’ that struggle against globalisation, before exploring indigenous politics it is important to conceptualise ‘globalisation’ and examine how the different perspectives on this term do not grasp the fact that the global pattern of accumulation and the global naming process that today affect indigenous peoples have colonial roots.

There are different conceptualisations and different emphasis regarding globalisation. Held and McGrew (2007) schematise the discussions by distinguishing between hyperglobalists, skeptics and transformationalists. For the first group globalisation is a key concept that defines a new era in history: the emergence of a borderless world where economic activity becomes denationalised. The skeptics, in contrast, argue that the concept has been overemphasised because in certain aspects the world has always been interconnected. The transformationalists assert that the social, political and economic rapid changes that are transforming modern societies and the world order are product of today’s globalisation.

This kind of theorisation constitutes an attempt to create an objective theoretical framework to describe globalisation (Jones, 2010). However, it tends to let aside issues of power, ideology and ontology, legitimating, thus, the current order as something given, natural and inevitable. It does not problematize adequately the political, economic and philosophical justifications of globalisation, such as Fukuyama’s view (1993) of the universalisation of liberal democracy as the only form of government; or Bhagwati’s view (2007) of the goodness of international economic integration through trade, direct foreign investments, short-term capital flows, and international flow of workers and technology. That is why it seems better to distinguish between descriptive and critical theories on globalisation. The first theories attempt to provide the best description, explaining globalisation as the intensification of worldwide transnational relations that proves how modernity is globalising (Giddens, 2003); or how the current global system constitutes a new modernity (Beck, 2000). The second branch of theories analyses critically globalisation as global governance, imperialism, empire or global coloniality.

Instead of understanding globalisation as a globally disorganised capitalism without hegemonic power and no international regime (Beck, 2000), the different global governance approaches see a sort of international regime, although unstable, still regulative. This new regime entails a shift from state authority to market authority,

where new actors such as transnational corporations and supranational organisations become political institutions that have direct political relations with civil society (Stiglitz, 2002; Strange, 1996; Dicken, 1999). In this context, global governance theorists propose to democratise governance through some reforms within the global institutions in order to provide voice to those who do not feel represented by these institutions (Stiglitz, 2002). However, this perspective tends to observe the public sphere as a depoliticised scenario, and it is a top-down approach which ignores grassroots resistance and its proposals (Santos and Rodriguez, 2005).

Many Marxist analyses equate globalisation to imperialism. The classical explanation is that overproduction is the natural condition of imperialism as the highest stage of capitalism, and it explains the necessity to conquer new territories (Lenin, 1917/1997). Thus, in the past European powers managed the imperial project through colonisation in order to expand their markets. Nowadays, the U.S. would occupy this role because since the beginning of the last century it started an international policy of lending and wars in order to obtain global hegemony (Hudson, 2003). Thus, if U.S. has promoted global trade rules, it is because it is a dominant trading nation and it has benefited from these policies (Swan, 2006). At the same time, since militarism and imperialism are inseparable for U.S. capitalism (Chomsky, 2002), it has established military bases around the globe and has promoted many military actions in the last decades (Bellamy, 2006).

Harvey (2003) focuses on economic imperialism based on the notions of over-accumulation and dispossession. For him, since capitalism suffers from lack of opportunities for profitable investments, there is an inherent relation between capitalist expansion and the often violent processes of dispossession. Then, the core of imperialism is 'accumulation by dispossession'; a concept rooted in Marx's notion of primitive accumulation related to the appropriation of land as the fundamental starting point for the establishment of a system of accumulation by exploitation. Harvey (2003) argues that today, the mechanisms of accumulation by dispossession have become more sophisticated, such as the financial system that is used worldwide for speculation; but also new mechanisms have appeared: the commodification of culture, genes, intellectual creativity, etc. and others have re-appeared, such as the dispossession of indigenous territories for mining and oil activities.

Other Marxist analyses focus on the world-system which has its origins in the 16th century imperialism as a constitutive element of the capitalist world economy (Wallerstein, 2004, 2006). Today, the pattern initiated during the imperialist era still remains active because the world economy is constituted by a hierarchical interstate system unified by the international division of labour, which divides production into core products countries and peripheral products countries. When exchange occurs between these groups of countries there is a flow of surplus-values from the producers of peripheral products to the producers of core products, reproducing a pattern of unequal exchange (Wallerstein, 2004, 2006). Others focus on the role of transnational elites (Dezalay and Garth, 2002) and corporations (Klein, 2002; Starr, 2000) in global rulemaking. Thus, economic pressure and military interventions seek to create favourable conditions to transnational capital. Hence, the consequence of U.S. military invasions is not the creation of exclusive areas for economic exploitation by the U.S., as was the project of European powers during the colonial era; the U.S. only assumes a superior position among international capitals (Robinson, 2007). Thus, transnational

elites negotiate and design the most comprehensive and favourable legislation through their governments (Petras, 2007).

Post-Marxist perspectives, although still committed to Marxist critique, build their framework on the post-structuralism of Foucault and Deleuze. Unlike the liberal assumptions of legitimate power exerted by the state in representation of the people, Foucault (2001, 2008) argues that power is involved in the construction and oppression of the lives of individuals. In the *ancien régime* (medieval ages) the sovereign exerted power by spectacular forms of punishment in order to impose a rule based on fear (Walby, 2007); in the modern era, power becomes bio-power through discipline and governmentality (Tadros, 1998). Discipline operates on particular individuals in a particular space (for example, in schools and hospitals) in order to govern the people by making them internalise the rules programmed by the sovereign. Governmentality operates on larger groups by making adjustments in the management of the population and their economic condition, the idea is to project a national management according to the needs of the people. Today there is an emergence of a new global structure of governmentality, a complex structure in which the nation-state is solely one level among others (Fraser, 2003).

However, Fraser (2003) asserts that Foucault's analysis was directed specifically to the fordist system of social regulation and the post-war Keynesian welfare state, where social services became disciplinary systems. Today's postfordist era is multilayered, dispersed and marketised, instead of being a Foucauldian socially and nationally concentrated system; in sum, the current order seems more Deleuzian than Foucauldian (Fraser, 2003). The complex theoretical framework of Deleuze and Guattari (1977, 1987) explores the self-production and reproduction of the capitalist system by a chaotic process of deterritorialisation, re-territorialisation and symbolisation. The system is, thus, establishing a rhizome: ceaselessly establishes connections between semiotic chains and organisations of power related to the arts, sciences, and social struggles.

On this framework Hardt and Negri (2000) theorise their notion of Empire. For them, in the current postmodern era bio-power is exerted by networks. Unlike neo-Marxist theories that observe a continuity line in the development of capitalist imperialism, Hardt and Negri see a change of paradigm: a new authority and a new design of production of norms and legal instrument of coercion. Thus, they try to describe the new paradigm of the Empire not in negative terms (as the decline of the nation-states, deregulation of the markets and so forth), but in positive terms, as a process of global regulation and domination in which UN organisations, transnational finance and trade agencies (IMF, WB, WTO) and corporations, all became relevant in the perspective of the supranational juridical constitution. This system thus produces not only commodities but also subjectivities: "they produce needs, social relations, bodies and minds; they produce producers" (Hardt and Negri, 2000: p. 32).

The main critique of this approach is that this juridical structure cannot make global laws and enforce them by itself (Fotopoulos and Gezerlis, 2002). It requires a centre of power, and although it is true that today there is no such centre of power in terms of a unique imperial power, it is represented by transnational elites (Fotopoulos and Gezerlis, 2002). But most importantly, Hardt and Negri's emphasis on an inexorable turn from modernity to postmodernity ignores that the global order is still based on the fundamental premises of modernity (Goodale, 2005).

It is important to remember that extractive activities are important components of the global political economy since colonial times and that it has not only economic effects on indigenous communities but also an effect on the subjectivity production of indigenous peoples by detaching them from their land to create new 'mining workers' or 'peasants'. That is why it is important to critically evaluate those perspectives that conceptualise globalisation as disconnected from modernity and colonialism.

The post-colonial perspective, heavily influenced by post-structuralist thinking (Dirlik, 1994; Childs and Williams, 1997; Brennan, 2000), focuses on the connection between the colonial and the discursive aspects of globalisation missed by the previous accounts. It seeks to resist all homogenisation (Dirlik, 1994) and the epistemic violence directed to essentialise the colonial subject (Spivak, 1988). Thus, in spite of their importance, Foucault and Deleuze are criticised for omitting an analysis of colonialism and how it determines the current global order (Krishnaswamy, 2002).

Hence, for Said (1998) imperialism and colonialism are supported by ideological discourses that assert that certain territories and people require domination. Thus, when most European thinkers celebrated humanity or culture they were actually celebrating ideas and values of their own national culture. Spivak builds on Marxism and Derridian post-structuralism in order to observe how the processes of subject constitution and material exploitation are complementary components of European imperialism. She explores how the undifferentiated subject of European culture becomes a justification for Europe to be the global legislator (Spivak, 1999). A variant of postcolonial studies is 'subaltern studies' that tries to answer the question suggested by Spivak, "Can the subaltern speak?" (1988) by constructing a history from below: the West in subaltern studies refers to a discourse created by a local history that authorised it as the home of reason, progress, and modernity (Prakash, 1994).

Postcolonial studies tend to conceptualise globalisation in terms of continuity of the symbolic oppression of colonialism: post-colonialism is understood as a phase of imperialism that today is called global capitalism (Childs and Williams, 1997). The postcolonial critique has made it possible to deconstruct the essentialised position of the Other; however, by emphasising the discursive and cultural analysis, it often minimises the material and epistemological aspects of global capitalism (Krishnaswamy, 2002).

The decolonial perspective attempts to overcome the shortcomings of postcolonial studies by going beyond the discursive critique. Globalisation is part of a process that began with colonisation and its global processes of accumulation and labelling. According to Castro-Gómez and Grosfoguel (2007) in the last century there was only a transition from modern colonialism to global coloniality; a process that has transformed the forms of domination. The new institutions of global capital (IMF, WB), military organisations (NATO) and intelligence agencies (FBI) formed after the Second World War and the end of formal colonialism, maintain the periphery in a subordinate position. Thus, current global capitalism has re-signified the domination triggered by epistemic and racial/ethnic hierarchies deployed by modernity (Castro-Gómez and Grosfoguel, 2007). Therefore, today global coloniality follows the same pattern that emerged with the colonial difference: the denial of Other's ontologies and epistemologies is what justifies the expansion of liberal capitalism. The global political economy driven by

powerful states, global institutions and corporations is embedded in the logic of coloniality.

This perspective has similarities and differences with postcolonial studies and Marxist World-System theory. It shares with post-colonial studies the critique of the Western construction of Others' subjectivities and with World System theory the critique of the historical and on-going process of global capital accumulation. However, it criticises the postcolonial studies' understanding of global capitalism without analysing how racial discourses organise world populations in an international division of labour that has direct economic effects (Castro-Gómez and Grosfoguel, 2007). It also criticises World System theory' view of culture as merely derived from the process of political economy. Therefore, decolonial theory does not suggest that there must be an analytical priority between economic structures and subject construction, but that the two of them are equally connected.

In Chibber's (2013) recent critique of postcolonial theory, he suggests that when postcolonial theorists argue that Indian nationalism in postcolonial India maintains the modernizing developmentalism due to the colonial ideological system remaining in their mind, they misunderstand the nature of capitalism. For him, the political elites act within a context of global capitalism that does not allow another path of action. Namely, the global economic structure and not the Western subjectivity explain the elites' politics (Chibber, 2013). As I discuss in Chapter 7, the answer cannot be found either in economic structures or in subject construction because these two elements are interrelated in the discourses about the inevitability of extractivism (economic structure) and underdevelopment of indigenous peoples (subject construction). These two elements are embedded in a Western ontology and epistemology uncovered by a decolonial approach.

Mignolo's (2011) decolonial proposal against global coloniality is, however, very ambiguous. Mignolo (2011) suggests that today there are four main competing agendas that seek to shape the global future: re-westernisation (the imposition of U.S. rule on 'developing countries'); the reorientation of the Left (a re-proposition of Keynesian state intervention); de-westernisation (the political and economic project of East and South Asia since the nineties), and the decolonial option. The last one asserts 'pluriversality' as a paradoxical universal project in which different cultural, economic and political regimes are accepted in the global scenario. But how can these regimes interact in a context of hegemonic liberal capitalism? How is a global negotiation in a global context of power inequality possible? In Mignolo's theory there is no analysis of how to face global hegemony but only a proposal of a global arena in which governments and movements can choose different options. However, they cannot easily choose new political pathways because the extractivist political economy is profoundly embedded in state and global structures.

Santos' project (2005) of 'globalisation from below' is much more concrete. For Santos (2002), today's globalisation is merely one form of Western localism that became hegemonic. Thus, through the sociology of absences and emergences previously mentioned, he looks for plural forms of resistance and legal and policy alternatives arising from the grassroots. This 'subaltern cosmopolitan legality' seeks to offer "new understandings and practices capable of replacing the dominant one" (Santos and Rodriguez, 2005: p. 18). Then, relying on Gramscian concepts of counter-hegemony

and subalternity, Santos proposes a counter-hegemonic globalisation that would allow social movements to achieve national and global hegemony. But, do indigenous peoples aspire to counter-hegemony? Or are they struggling for autonomy or self-determination without competing for hegemonic positions in national or global scenarios? To answer these questions it is necessary to explore the nature of indigenous claims.

2.4.2. Indigenous peoples and the debate on ‘new social movements’

In the field of social movements (as in any other) there is a tendency to transplant foreign theories to explain local phenomena. That is the case of the understanding of indigenous peoples as part of ‘new social movements’ (NSM) that would struggle to achieve a ‘radical democracy’ (Nash, 1997; Esteva, 2007; Postero, 2010; Van Cott, 2008). Indeed, these theoretical frameworks do not grasp the basis of indigenous politics because they neglect that indigenous politics has profound particularities related to its historical context.

NSM theory, a theory originating in Europe and developed in the U.S., focuses on post-industrial societies in which political claims emphasise more identity and cultural issues (post-material struggles) than labour and economic issues. Although there are a lot of debates about the theory, the majority of authors share the idea that the novelty of NSM is related to the new values and forms of collective action and its cultural, plural and identitarian dimension (Dinerstein, 2012).

NSM theory is deeply related to the notion of radical democracy. Radical democracy has been firstly proposed by Laclau and Mouffe (2001), who argue that the opposition liberalism/*ancient regime* was the last moment in which two antagonist forms of society presented clear boundaries. Therefore, the Marxist analysis that divided society in social classes would be flawed because class antagonism cannot represent a whole totality against another one. The project of radical democracy, consequently, rejects the confluence of struggles under one specific political agenda, emphasising in contrast the plurality and indeterminacy of social struggles, such as ecological, anti-authoritarian, anti-institutional, feminist, anti-racist, etc. Thus, the base/superstructure distinction is abandoned, and the view that there are superior claims for political emancipation is rejected: the constitution of a counter-hegemonic project might only come from a complex process of political articulations toward the expansion of the liberal-democratic ideology (Laclau and Mouffe, 2001; Mouffe and Holdengräber, 1989).

According to this framework, if there are many contrasted groups, there is a necessity to extend what Laclau calls ‘chains of equivalences’ or the identification of common agendas to articulate struggles, and finally to propose a general representative of the whole (Laclau, 2000). However, the total equivalence never exists because there is a natural and inherent precariousness within democracy, derived from the indeterminacy of the social (Butler, 2000).

Therefore, the essence of democratic politics lies in the constant contestation of the boundaries of ‘the political’. While mainstream theories of liberal democracy emphasise formal modes of consensus, radical democracy sees that disagreement is the basis for maintaining and perpetually reshaping democracy (Robinson, 2009). Thus, the formal consensual framework of Rawls entails a notion of the political that is, in fact, depoliticised (Honig, 1993) or a political philosophy without politics (Mouffe, 2005).

Similarly, rather than seeing the conflict between liberalism and democracy as false or easily transcended through proper procedures (as is believed by participative and deliberative democracy theorists), and rather than believe that this conflict would lead liberal democracy to self-destruction (as Schmitt), radical democracy scholars argue that this is a necessary tension that cannot be solved but can only be provisionally stabilised through pragmatic negotiations among political forces (Honig, 2007).

The neo-Marxist critique of radical democracy points out how the radical democratic critique of Marxism and the postmodern affirmation of plurality of struggles entails the renunciation of any real attempt to overcome the existing capitalist regime. According to Žižek (2000) postmodern politics has rightly repoliticized important dimensions previously considered apolitical, but “it does not repoliticize capitalism, because the very notion and form of the political within which it operates is grounded in the depoliticization of the economy...it does not reach a radical level of the political act proper” (Žižek, 2000: p. 98, 99).

Thus, for Kapoor (2002) the emphasis on post-materialist struggles is misleading because capitalism is not endangered by racial, gender, or sexual identities struggles. They are important but not sufficient struggles (McLaren and Farahmandpur, 2000). For neo-Marxists, the spread of new political subjectivities which seems to relegate class struggle is the result of the class struggle in the context of today’s global capitalism. For them, not all struggles have the same potentiality; the economic factor determines in advance the structure in which the different claims seek emancipation (Žižek, 2000). Marxism actualises these struggles by interrogating how they are conditioned by material relations of power (McLaren and Farahmandpur, 2000).

It is important to take into account this critique because indigenous politics cannot be conceptualised as post-material struggles since the defence of territorial rights has profound economic and distributive local and national impact. In addition, the Western bias of radical democracy is also problematic. According to Mouffe and Holdengraber (1989) radical democracy attempts to fulfil the project of modernity but, unlike Habermas, it overcomes the epistemological perspective of the Enlightenment by advancing a postmodern critique of rationalism and subjectivism. Thus, the project for radical democracy is situated within Western modernity, and the dominant political tradition of liberal democracy. But this tradition has a colonial dark side that is not questioned: radical democracy fails to problematize the relation of liberal democracy with capitalist modernisation, coloniality and global inequality (Conway and Singh, 2011).

Indeed, radical democracy universalises a singular ontology of the political (Conway and Singh, 2011); their proponents seek to implement the ideals of modern democracies by promoting inclusion rather than questioning Western principles and structures. This demonstrates how Western countries own the term and use it to discipline countries not assuming the Western model. For instance, the fact that Britain has a monarchy and that this is not understood as contradictory to democracy shows how the notion is constructed according to Western conceptual boundaries (Dhaliwal, 1996).

Although Mouffe (2008) argues against the universalisation of liberal democracy as a global regime, proposing a ‘pluriverse’ (a world order in which hegemony is pluralised in many regional decision centres), for her pluralism within each regime refers to

‘conflictual consensus’ on its constitutional principles, and among regimes refers to a similar consensus on the unquestionable principles of modernity (Conway and Singh, 2011). Thus, the scope of the political in radical democracy is really restricted because it does not go beyond Western modernity.

Indeed, the importation of concepts such as radical democracy or NSM in Latin America is very problematic. The theoretical premise of radical democracy is that the last moment in which two antagonist forms of society presented clear boundaries was the opposition liberalism/*ancient regime*; so today this theory assumes that there is one society in which different oppressed sectors make claims to the state to satisfy their demands. Zibechi (2012) rightly asserts that in most Latin American countries there is no ‘one society’. There is an official society of colonial legacy, with its legal, economic and political institutions and social and cultural norms, but there is also another society organised in communities with ancestral traditions and their own social, political and economic organisation: “the worst thing we can do is trying to understand this reality based on concepts such as social movements, because this involves applying categories alien to what we are trying to comprehend” (Zibechi, 2012: p. 177).

In Latin America, any theorisation must firstly observe its specific context. Thus, the notion of democracy can be reconceptualised in a trans-modern way in order to be decolonised from its Western liberal form (Grosfoguel, 2007). Alternative traditions of democracy are rooted in indigenous peoples’ experiences. For example, in today’s Bolivia two political economic organisations coexist: the liberal and the communal (*ayllu*) systems. Mignolo (2011) argues that after five hundred years of external and internal colonialism, indigenous peoples in Bolivia still base their social organisation on Quechua and Aymaras principles, not on Greek notions of democracy, in spite of neoliberal or Marxist attempts to import their own Western model of liberal, radical-liberal or Marxist democracy.

Therefore, in the case of indigenous peoples, their political aims and strategies to advance their demands entail an extension of the political, namely, an extension of what the current system is willing to discuss in the political arena. However, these political aims, instead of being identified with the indeterminate articulation of NSM (as suggested by radical democracy theorists), or the politisation of economic structures (as suggested by the Marxist critique), must first be observed in the deep indigenous claims for respect of their social and economic organisation.

2.4.3. Indigenous politics and identity politics

The theories on NSM and radical democracy tend to conceptualise political claims around the categories of ‘recognition’ and ‘redistribution’. If indigenous politics cannot be correctly grasped by these theories, the notions of recognition and redistribution must also be re-evaluated to properly understand indigenous claims.

Fraser (1995) provides an analytical framework for grasping the struggles for recognition and redistribution. There are socioeconomic injustices rooted in the political-economic structure of society (exploitation, economic marginalisation, deprivation); and cultural or symbolic injustices rooted in social patterns of representation and interpretation (domination, non-recognition, disrespect). Both have affirmative remedies (directed to correct injustices without overcoming the foundations

of the system), and transformative remedies (directed to correct injustices by transforming the foundations of the system). Multiculturalism would be the affirmative remedy for recognition injustices by revalorising devalued group identities, while leaving intact the contents of those identities and the rules of group differentiation determined by the system. Deconstruction would be a transformative remedy for recognition injustices by transforming the cultural-value structure and change everyone's sense of belonging, affiliation, and self (for example, affirmative remedies for homophobia are related to gay-identity politics, which aims to revalue gay and lesbian identity; the paradigmatic transformative remedies is 'queer politics', which would deconstruct the homo–hetero dichotomy) (Fraser, 1995).

Regarding economic injustices, the welfare state would be the affirmative remedy by seeking to diminish mal-distribution, while leaving intact the underlying political-economic structure (by increasing the minimum salary, providing unemployment insurance, etc.). Socialism would be the transformative remedy by seeking justice through the transformation of the underlying political-economic structure. By restructuring the relations of production they would change the social division of labour and thus the social conditions for all. Affirmative and transformative remedies have mutually contradictory aims. Whereas the first tends to promote group differentiation, the second tends to undermine it (Fraser, 1995).

Many scholars criticise the distinction between recognition and redistribution. Butler (1997) argues that misrecognition injustices are not just symbolic but also material as mal-distributive ones; Honneth (2004) argues that all social injustices are always related to problems of recognition, so there is not a deep distinction between economic and cultural injustices. Tully (2000) argues that both struggles are internally related: the achievement of recognition facilitates the gaining of political and economic power, and the struggle for redistribution usually entails the correction of unjust norms of recognition.

Fraser holds the distinction (1997, 2003) by arguing against Honneth that today many struggles against neoliberal globalisation are not directed to some recognition but to overcome the governance structure of the capitalist system. Against Butler (and indirectly Tully) she argues that misrecognition may have economic effects, but it is analytically distinct from mal-distribution. She argues that unlike pre-capitalist societies where status and class are combined and misrecognition simply entails mal-distribution, in capitalist societies there is a detachment of economic distribution from structures of prestige. Thus, for example, the economic marginalisation of homosexuals in contemporary capitalism is better understood as a problem of recognition than as rooted in the structure of capitalism; the restructuring of the status order will solve this economic inequality, the same with race and gender. Hence, current social justice is not adequately grasped by the classical Marxist emphasis on the economy, but by acknowledging that both types of injustices have diverse and valid claims, which should be somehow politically harmonised: radical democracy must find a way to combine the struggle for anti-essentialist multiculturalism with the struggle for social equality (Fraser, 1995, 1997).

Fraser's equation of race and gender injustices as misrecognition injustices is problematic. It could be true that most times gender economic inequalities are rooted in misrecognition, but it is not necessarily the same for race. Her view of racial injustice is

located in today's discrimination against immigrants in the U.S. that produces economic exploitation. The distributive remedy would be economic inclusion (in social welfare systems) and the recognition remedy would be respect. However, for many indigenous peoples around the world the root of the problem is not merely recognition or the symbolic system of oppression, but also the political economy that has historically dispossessed their territories and livelihoods. Solving the problem of misrecognition according to Western social or economic inclusion would not solve the problem of past and current dispossessions. The recognition of indigenous rights in a context of extractivist capitalism embedded in state structures cannot guarantee the respect for indigenous ways of life.

It is true that both recognition and redistribution injustices are worth facing; but it is necessary to critically observe the nature of both of them in relation to specific social contexts. For example, many Latin American indigenous peoples, unlike feminist and gay activists or many race activists in Western countries, are not looking primarily for legal, political or economic inclusion, but for self-determination. This entails a profound transformation of liberal capitalism, but it is different from socialist and deconstructive projects.

The relation between indigenous claims and the political economy should not suggest that their struggles are embedded in socialist agendas. The close relation between indigenous politics and political economy has always been recognised; some speak of 'ethno-class' (see Postero and Zamosc, 2006) or *campesindios* (Bartra, 2010) where social class and ethnicity converge. The problem with this equation is not the existence of common features, but that classist policies were imposed by force in countries like Mexico, Peru, and Bolivia in order to implement a corporate model which attached indigenous peasants to the state (Postero and Zamosc, 2006). In these countries indigenous protests led to important land reforms in a process in which the word *indio* (indian) was abolished from official discourse and replaced with *campesino* (peasant). Although well intentioned, these policies affected the political strength of indigenous peoples by denying their identity. These groups have had to fight against this classist position by trying to recover their culture (Langer and Muñoz, 2003).

That is why indigenous politics are neither simply class politics nor identity politics (politics for recognition in Fraser's framework), but a politics that has a different ontological and epistemological foundation. This may be called 'identity *in* politics' (Mignolo, 2007). This politics does not assume a given identity or its constructivist nature (so it is beyond the debate primordialism vs. constructionism) but focuses on the colonial nature of the allocation of identities (such as Indians, black or *mestizo*). The acknowledgment of this allocation of identities does not mean a queer celebration of categorical inconsistency or deconstruction but the necessary appropriation of an identity to express indigenous politics: "I am not Indian, dammit, I'm Aymara. But you made me Indian and as Indian I will fight for liberation" (Fausto Reinaga, Aymara intellectual and activist quoted by Mignolo, 2007: p. 120).

Many indigenous peoples recognise themselves as peoples or nations (they consider themselves as Awajun, Ashuar, Maories, and so forth). Then, the different identities imposed on them (Indian, natives, aborigines, *campesinos*, indigenous) have been used as means to express their indigeneity. And this indigeneity has particular political and economic aspects that contrast with the liberal capitalist logic.

Obviously, there is also a certain plurality within indigenous politics, but an important tendency of this politics goes beyond the trap inclusion/exclusion advanced by Western modernity. This trap has been deployed through history by liberal legality and the capitalist political economy embedded in the nation state in order to deny indigenous self-determination. For that reason, in the next section I analyse the nature of the indigenous autonomic or counter-hegemonic claims in relation to the state.

2.4.4. Indigenous politics and the state: between autonomy and counter-hegemony

Indigenous politics goes beyond 'recognition' and 'redistribution' claims, and propose a politics of self-determination. The politics of self-determination, however, is problematic because it implies the transformation of the relation between the state and indigenous peoples. There are basically two paths undertaken by indigenous peoples to achieve this transformation: the exercise of autonomic practices and counter-hegemonic strategies. In this section, I discuss the interpretations of indigenous struggles as counter-hegemonic practices or radical autonomist practices and the possibilities to transcend or not state structures in order to define the place of indigenous politics in society and better understand its relation to state extractive policies.

As explained in Chapter 1, self-determination refers to the socio-political and juridical form of indigenous peoples and autonomy refers to its political-philosophical claim. The claims for autonomy are observed, on the one hand, as claims outside the state, beyond the state or *de facto* autonomy; and on the one hand, as claims within the state or counter-hegemonic (González, 2010; Burguete, 2010). Whereas the perspective on radical democracy emphasises the second group of claims; the post-Marxist perspectives emphasise the first group of claims.

The Marxist categories of subalternity, antagonism and emancipation are relevant to understand how indigenous autonomy is usually grasped. The conceptual origins of subalternity were proposed by Gramsci, who saw an organic relation of hegemony between the state and civil society. Hegemony is the exercise of domination through political legitimacy, rather than through force (Kennedy, 1982): while force is exerted by repressive institutions (army, police) consent is produced by institutions such as schools, churches, or media. In that context, the subalterns seek a passage from subalternity to a new hegemonic-domination through the communist party (Modonesi, 2010); or - in the appropriation of Gramsci by Laclau and Mouffe (1985) - through radical democratic processes. The liberal-capitalist state is here a necessary intermediation to achieve a new hegemony and the emancipation of the subalterns.

The theoretical notions of antagonism and autonomy originate in the methodological inversion of Italian workerism: the focus is no longer on capital but on the antagonist class. Thus, not only the transformation of capital determines the formation of classes, but this composition impacts directly on the form and power of capital. In Negri, the negative dimension (antagonism, self-valorisation/autonomy) is followed by a positive dimension: the invention of a mode of production not dominated by capital categories. Antagonism relates to the relational character of the subjectivisation process which derives from the experience of insubordination, whereas autonomy relates to the relatively free condition that makes possible the struggle. In the eighties with the

influence of Spinoza, Negri diminished the importance of the category of antagonism because between *potestas* and *potencia* there is not a mediation of counter-power, it is replaced by 'power to do'. Thus, autonomy goes beyond antagonism not only as a process but as category: the subject is not constructed in the struggle, autonomy is a genetic and original feature. What matter then is not the contradiction between workers and capitalists but the autonomic processes of constitution of alternative subjectivities (Modonesi, 2010).

Hence, whereas counterhegemonic projects prioritise the construction of totalising ideas for the whole society and privileges political struggle and participation within political institutions; emancipatory projects seek to subvert the predominant political structure by privileging direct self-determination: "counter-hegemony seeks to create an alternative power, emancipation seeks to end the relations of power" (Ornelas, 2012: p. 149).

Holloway (2009; 2010) radicalises the autonomic project by criticising the understanding of working class as positive subject. According to him, the point of critique must not be the working class instead of capital, but negativity instead of positivity, namely, working class as negation. Denying capital is denying what capital creates: abstract work; consequently, the political struggle is for the emancipation of what has been denied, the free doing. Therefore, class struggle is not the struggle of work against capital, but the struggle of doing against work, the struggle against the whole classificatory construction based on abstract labour.

Holloway applies this theoretical development to the Zapatista uprising. The Zapatistas became visible after the coming into force of the NAFTA agreement in 1994 and the threatening of indigenous land. Zapatistas propose a revolution based on dignity, with no intention to seize state power but to radicalise the democratic process and obtain autonomy beyond administrative decentralisation. They negotiated with the government the San Andres Agreements of 1996, for a constitutional recognition of self-organisation. However, the government implemented 'free municipality' which only identified what kind of indigenous authorities were recognised by law and how they should be elected, making any other form of organisation illegal. Hence, beyond state recognition, Zapatistas implemented an authentic system of government exercised by their communities (Esteva and Perez, 2001). By 2003 there were five Zapatista regions in Chiapas where the Clandestine Indigenous Revolutionary Committee operated. That year, the Zapatistas started a process of demilitarisation of the movement towards the strengthening of civil society, and opened the space for the discussion of autonomy. By 2007 there were 38 Autonomous Rebel Zapatistas Councils (Dinerstein, 2013).

For Holloway (2002), the Zapatista revolution would show that autonomy is not within the state but outside the state. It doesn't require to take power by force or elections, but to exert direct control on their own political and economic organisation outside the state; otherwise state power would be reinforced. Additionally, the aim is not only to exercise direct autonomy but also to deny the classifications made by capitalism as worker, indigenous, etc. That would be the importance of the Zapatista balaclava: they do not need to expose their identity but the other way around, to present an empty identity that can assimilate other struggles. Holloway argues that this movement struggles against classification.

A similar development has been made by Hardt and Negri (2009). According to them, the Zapatistas do not demand the legal recognition of indigenous identities equal to others nor do they claim the sovereignty of traditional indigenous power structures vis-a-vis the state. Although the Zapatistas are predominantly indigenous, their politics would not rest on a fixed identity, thus, they avoid getting stuck in antimodernity and move on to the terrain of altermodernity. For Hardt and Negri (2009) politics based on identity immobilises the production of subjectivity; liberation instead requires taking control of subjectivity production. Identity politics is only useful if directed to its own abolition as queer politics suggests.

Radical autonomists are very influential in the analysis of indigenous struggles (see Albertani et al, 2009). Their main ideas, however, are very controversial. I will focus on the theoretical proposals of indigenous direct autonomy without the state as mediator, and indigenous autonomy as struggle against identity.

Latin American examples would support the claim of direct autonomy outside the state because when indigenous movements engage in counter-hegemony, they remain trapped in the institutional framework of liberal capitalism (see 4.3.3). For Cerdeiras anyone attempting to take the liberal state is likely to end up taken by it: in occupying the state one is simply reconstituting domination/hegemony under a new direction (in Reyes, 2012). In addition, for Reyes (2012) and Ceceña (2012) imagining life beyond the capitalist mode of production is inseparable from the necessity to practice politics beyond the liberal state: obtaining autonomy without mediation is the fundamental basis of strength of different movements and communities.

However, the exercise of autonomic practices without changing the social, economic, and political relations with the state are difficult to achieve. According to Gutierrez (2011, 2012), the total rejection to any capitalist or state element is unlikely to succeed because this rejection becomes a material limit to the development of autonomic politics (Gutierrez, 2011, 2012). Indeed, there is an analytical impossibility of pure autonomy because autonomy is a permanent struggle (Böhm et al, 2012).

Autonomy from indigenous perspectives might entail political practices outside the state or inside the state but never *without* the state, because autonomy is not self-conceived, it relates to another political subject. Thus, when many indigenous peoples engage in political parties or political institutions within the logic of the state, they are practicing counter-hegemonic strategies to achieve some degrees of autonomy within and in relation to the state; when they recur to non-institutionalised practices such as social mobilisation and direct self-determination, they are practising autonomic strategies in order to achieve also some degrees of autonomy within and in relation to the state. In both cases, the state and liberal capitalism become mediating devices to express the indigenous philosophical impetus (autonomy) and its legal and political form, self-determination.

Regarding the argument about autonomic practices as anti-indentitarian politics, it must be noted that indigenous autonomy cannot entail a struggle against indigeneity. This argument corresponds to a misunderstanding based on the tendency to observe indigenous practices through the eyes of Western theories. Thus, the autonomist allegations of non-identity taken from some Zapatistas mottos are not coherent with

indigenous struggles that exactly depend on their identity and positive engagement into politics in order to obtain a certain degree of autonomy.

According to the Aymara intellectual Fernandez (Mignolo, 2011) indigenous mobilisations are not merely about opposition to specific policies, rather they express an indigenous episteme, a system of understanding the world that has a completely different basis for thinking about socio-political relations and practices, based on a model of horizontal solidarity that extends not only to all humans but also to non-humans in the natural and cosmological world. Similarly the indigenous activist Ortíz (2009) argues that whereas autonomy for some is synonymous with utopia, process, legal reform, struggle, etc. for indigenous peoples it is beforehand a form of communitarian life, with the possibility to decide the collective path toward the reconstitution of the peoples and its legal recognition. The Katarist scholar Simon Yampara (2010) argues that there are two paths of autonomy: a subaltern autonomy conditioned by the system on the basis of the current territorial structures, or an indigenous autonomy as a process of decolonisation and liberation directed to re-territorialising the country and reconstituting networks of inter-ecological communality. In these cases, autonomy is a political principle for the redefinition and constitution of indigenous peoples as peoples with the right to self-determination in ontological/epistemological, politico-legal, and economic terms.

The indigenous decolonial turn is an epistemic and ontological turn. The level of abstraction needed to conceptualise autonomy is even more profound than the post-Marxist approach. Here, the issue is not to disconnect 'doing' from 'labour', or to react against the colonial imposed category of 'Indio'. The issue is not to follow the queer aspiration of identity abolition. Most indigenous peoples struggle against the modern project of exclusion or inclusion in political, economic and ontological/epistemological terms. Their primary aim is to disconnect the process of political subjectivity itself from the very Western abstractedness. This decolonial autonomy would provide a platform to discuss with the state and the society the extension of the political in order to truly recognise their political right to self-determination and the respect of their legal and economic organisation.

This project is difficult to achieve in relation to or within the state, but it would be illusory to think that self-determination is possible without the mediation of liberal capitalism. In the following chapter I discuss in more detail the possibilities offered by the encounters between the liberal legality and indigenous peoples, and the violent processes of inclusion/exclusion.

2.5. Conclusion

Western modernity is the ontological and epistemological dimension of liberal capitalism, and liberal legality and the capitalist economy are its regulative dimension. All of them (modernity, liberalism and capitalism) have a dark side: coloniality, exception and exploitation/dispossession. Marxist analysis has uncovered the dark side of capitalism and Schmitt's politics has uncovered the dark side of liberalism, but they have not proposed a comprehensive critique of both dimensions. Western epistemology and ontology (that can be summarised in rational humanity and universal knowledge) has been criticised by the first generation of the Frankfurt School, post-structuralism and post-colonial studies, but its radicalisation has only reached a relativist and

deconstructivist stage detached from concrete sufferings related to economics and regulations. It is necessary to rethink the critique of modernity from a non-Western conceptual framework. A decolonial perspective is crucial in this task.

From that perspective, modernity and coloniality constitutes a common matrix and the basis for the development of capitalism and liberal legality. Colonialism created the colonial difference based on racism and eurocentrism and the global division of labour, namely, coloniality of being, knowledge and power. Liberal capitalism has been naturalised denying other types of social and economic organisations rooted in other ontologies and epistemologies. The task then is to delink epistemologically and revalorise the epistemologies and ontologies of the South. Only then is a trans-modern dialogue possible.

Thus, the expansion of liberal capitalism called 'globalisation' rather than being understood as a second modernity, global governance, imperialism or Empire (all categories rooted in Western thinking) can be better understood as global coloniality, because although the current era of the global market has differences from the Keynesianism, the first liberalism and mercantilism, the principles of colonialism - the one-dimensional view of the human and knowledge - are the same, and still produce similar patterns of dispossession of indigenous peoples.

In that context, notions such as new social movements and radical democracy are unsatisfactory to explain the nature of indigenous peoples' mobilisation. These theories have as their premise the existence of one society in which there is a diversity of subjectivities with different aims in social struggles, which can be articulated towards social inclusion. However, in Latin American countries many indigenous peoples represent another social organisation that is not seeking legal, political or economic inclusion, but autonomy and self-determination. Indigenous politics in Latin America is not merely a type of identity politics because there is not an assumption of a given identity or celebration of its construction, but the acknowledgement that indigenous identities have colonial foundations and that they can be the container of the politics of indigeneity.

Finally, post-Marxist projects of pure autonomy and non-identity cannot explain indigenous autonomy because indigenous struggles depend on their identity and they engage in politics in relation to or through the state and liberal capitalism; moreover, their identity is what connects them to their territories and it is what constitutes the basis for their survival. Indigenous peoples are not struggling solely against capital and its classificatory imposition, but against any Western imposition/assimilation (political, economic, cultural, and epistemological). This is a project of self-determination that seeks to extend the political in a way that the state might truly recognise the indigenous principles and their political and economic organisation.

Chapter 3: Beyond inclusion and exclusion: the encounters of liberal legality and indigenous peoples

3.1. Introduction

In this chapter I explore different liberal responses to indigenous peoples' territorial rights: from the use of International Law as a tool for conquest and exploitation up until the recognition of indigenous rights through multicultural legality. The aim of this chapter is to evaluate how political philosophy on multiculturalism and liberal legality addresses the inclusion/exclusion paradox, and to examine the potential of human rights to move indigenous peoples' political agendas forward. In this way I aim to provide a better understanding of the relation between indigenous politics and liberal legality.

In the first part of this chapter, I focus on the various legal means applied in three different historical stages to address indigenous peoples' territorial rights: the doctrines of 'just war' and 'terra nullius' during the colonial era; the implementation of treaties, private property, contractual regimes, and economic and social policies during the first decades of independence of the new republics; and the doctrines of native title and consultation during the current era of multiculturalism. The goal is to observe what has improved and what has remained, in these different historical stages in regard to indigenous peoples' territorial rights.

In the second part I focus on the foundations of current multiculturalism in order to explain how it justifies the accommodation of indigenous claims within the liberal framework. I explore the debates of the political philosophy on multiculturalism between liberals, republicans, postcolonials and Marxists. In addition, I broadly analyse the meaning of Latin American multicultural policies in the nineties, and its potential and limitations to protect indigenous peoples' territorial rights.

Lastly, I present the tensions between the liberal framework and indigenous communal rights and the limitations to accommodate indigenous claims within liberal legality. I explore the roots of the tensions between indigenous and liberal principles, the potentials and limitation to apply the category of human rights to advance indigenous claims, and the basis for proposing a decolonial approach to human rights.

3.2. The legal factor: indigenous peoples and liberal legality

In this section, I show how indigenous peoples have been oppressed in radical or subtle ways by liberal legality in different historical and geographical contexts -from colonialism until today's era of multiculturalism- in order to explain how the Law is an instrument of coloniality and at the same time a device appropriated by indigenous peoples to advance their political agendas.

3.2.1. Colonial means of elimination. Doctrines of ‘just war’ and ‘terra nullius’

The encounters between liberal legality and indigenous peoples’ territorial rights have encompassed stages of open and violent exclusion, violent inclusion and friendly assimilation. During colonisation, Western legality justified and legitimised the actions of colonial powers. Gilbert (2006) argues that the implementation of International Law was based on two assumptions regarding indigenous peoples: indigenous peoples did not legally exist (thus, their land could be appropriated), or indigenous peoples existed but were inferior (thus, their land rights existed but could be extinguished).

The first means of land acquisition were the legal doctrines of discovery and conquest. According to these doctrines the discoverer of unoccupied lands acquired a land title that gave territorial rights against any other imperial power. Thus, as indigenous peoples were not considered human beings they could be conquered, made slaves and their lands were regarded as unoccupied (Corntassel and Hopkins, 1995).

In *De Indis et de iure belli relectiones* (1532), Francisco de Vitoria affirmed that Indians owned the land in America, and ‘discovery’ was not a proper legal doctrine for acquisition. However, although Indians had certain land rights, these rights could be extinguished if the conquerors had a ‘just cause’ to trigger a war. The ‘just war’ was legitimately exerted if the Indians did not allow the colonisers free passage or trading, the propagation of Christianity, or the benefit of the wealth of their land. In addition, Vitoria asserted that indigenous peoples were unable to manage a state because, among other failures, they had “neither proper laws nor magistrates”, thus, Europeans assumed the administration of their land “in their benefit” (Gilbert, 2006: p. 11). In sum, Vitoria elaborated theoretically a legal title for the conquest of indigenous territories, which was reaffirmed in the 16th and 17th centuries by most legal theorists of the Natural Law School, such as Grotius and Gentili.

The Treaty of Westphalia (1648) meant the end of the Thirty Years War, the end of the Roman-Catholic Church political hegemony, and the emergence of the modern European system of states which replaced the feudal order. This new political scenario had a profound impact on indigenous’ territorial rights because the nation-state became the only subject of International Law (Gilbert, 2006). Thus, there were two treatments for indigenous peoples: either considered as nation-states or as inhabitants to be assimilated or excluded from the nation-state (Dersso, 2010). Another important effect was the distinction between territorial sovereignty and title to land, the first as an issue of International Law and states, and the second as a matter of property rights and individuals. This distinction created a situation in which International Law excluded indigenous notions of territorial rights and communal tenure (Gilbert, 2006).

Hence, these two denials (the negation of indigenous sovereignty and the negation of communal tenure) were the basis for the doctrine of *terra nullius* (land belonging to nobody), a discourse that justified the dispossession of indigenous peoples for not being adapted to European legality. Even though there is a discussion as to whether John Locke provided the foundations for *terra nullius* (see Borch, 2001), it is unquestionable that he influenced the idea of the superiority of settled agricultural societies over indigenous peoples (Gilbert, 2006). In his *Two Treatises of Government*, Locke proposed that property in land originated from labour and land cultivation, and since

colonisers alleged that these activities were absent in indigenous societies, they considered themselves as free to settle and acquire property rights by cultivation without indigenous consent (Tully, 1994; Dodds, 1998). Locke's view, thus, served the colonial expansion by legitimising the use of *terra nullius* in 18th century (Short, 2003).²

Since the application of *terra nullius* depended on "the degree of political development... of the inhabitants of the land in question" (Ritter, 1996: p. 7), indigenous peoples were considered lawless and backward because they had not yet defined property rights, which required a minimum standard of civilisation and legality (Tully, 1994; Banner, 2007; Ritter, 1996). These ethnocentric and racist arguments were maintained even after the colonial period. Thus, whereas early International Law provided the colonisers with a title of their conquests, modern International Law aimed at justifying the stability of these conquests for the new republics (Gilbert, 2006). Then, the decolonisation process did not end the dispossession of indigenous land, but began the process of internal colonialism, in which the power over land not only allowed the resettlement and exploitation but also the territorial foundation of the settler society (Tully b, 2000).

The inclusion/exclusion paradox was clearly presented in transition from colonial times to post-colonial times: the state finished the project of exclusion of indigenous territorial rights with openly violent means while at the same time it recognised certain indigenous peoples rights as 'citizens' of the new nations, namely, it recognised rights according to the liberal Western logic. It was an inclusion inherently exclusionary.

3.2.2. Modern means of assimilation

Legal mechanisms of dispossession have affected indigenous peoples in the global South as well as in the global North, although with their specific dynamics but under the same rationale. It is for this reason, that it is important to undertake a brief analysis of the similarities of the dispossession patterns of Latin American countries with countries of the Common Law systems (United States, Canada, Australia, and New Zealand). This analysis will assist in the explanation of the global indigenous activism and politics elaborated in the later chapters of this thesis.

In 18th century Australia, *terra nullius* was a consolidated doctrine because the majority of land titles were based on it, whereas in North America the doctrine had already been denied in 1665 by an English Royal Commission which asserted that North American land belonged to indigenous peoples (Tully, 1994). This decision was reaffirmed by the Royal Declaration of 1763 which established that the only authority that could negotiate with indigenous peoples (considered as nations) and to secure property to the settlers was the Crown.

After independence, however, indigenous peoples were dispossessed using old Vitoria's theories. In *Johnson v. Minton* (1823), the Supreme Court declared that U.S. title to Indian lands could be obtained simply by discovery, such that the title of the discoverer

² It must be noted that *terra nullius* has been used beyond the 18th century. For example, the Berlin Conference (1884-1885), which fostered the 'scramble for Africa' of European colonisers, assumed that most of Africa was *terra nullius* (Gilbert, 2006).

overcame the rights of the plaintiff who bought the land from the Indians (Gilbert, 2006). Then, in *Cherokee Nation v. Georgia* Justice Marshall developed the “domestic dependent nations” doctrine, which viewed the relationship between indigenous communities and the U.S. as “that of a ward to his guardian” (Fromherz, 2008: p. 1365).

These decisions opposed the interests of many settlers who bought lands from Indians. The different attitudes of the settlers in North America and Australia can be explained as due to the fact that the British colonisers in Australia were large groups controlled by the Crown. North America and New Zealand colonies, by contrast, were settled by weak expeditions which operated outside the Crown (Short, 2003). They were not able to appropriate land by force and there was initially no official authority that prohibited land purchases (Banner, 2005). However, most transactions celebrated between the settlers and the natives were not fair by being made at highly unfair rates of exchange or they were fraudulent. In New Zealand for example, the government investigated the transactions in the 1840s and found that Maori sellers had no legal authority to make transactions on the enormous areas acquired by the settlers (Banner, 2007).

Similarly regarding contractual transactions, the treaties celebrated with indigenous peoples reflected unequal bargaining power (Short, 2003). Indigenous peoples accepted to make treaties based on their own tradition of treaty-making. For instance, before colonisation, the *Haudenosaunee* of the eastern Great Lakes in today’s United States developed sophisticated treaty practices that governed the political relations between indigenous nations (Borrows, 2005). However, the treaties proposed by the colonisers were made through an imposition of a Western conceptual framework. In the treaty with the *Haudenosaunee* (1789), the U.S. recognised six million acres (half of New York) to Indian nations. However, as indigenous land’s purchases by the state were illegal, New York’s state used lease contracts -many of them for 999 years- to control almost the whole indigenous territory (Churchill, 2002). The *Haudenosaunee* initially agreed because the governor said that this was a way to ensure their property against illegal sales and New York’s high Court of Justice legitimated the state’s illegal leasing contracts (Churchill, 2002).

The treaties and land purchases motivated the U.S. jurisprudence to make a turn. Although Chief Justice Marshall applied discovery and trusteeship doctrines in earlier cases, he denied them in *Worcester v. the State of Georgia* (1832). In this case indigenous property and government were legally recognised, though under the *imperium* of the settler nation (Tully, 1994; Dodds, 1998). Thus, although Marshall recognised American Indian nations as sovereign, this recognition applied only to the relationship between Indian nations and other states, though not with the Federal government.

Therefore, even though some celebrate the Royal Declaration and the Marshall jurisprudence as the basis of a certain kind of intercultural recognition of indigenous peoples’ property (Tully, 1994), in practice, the Common Law has aimed at eliminating indigenous’ territorial rights. Since the *imperium* on indigenous territories has never been questioned, the U.S. government created the trust system of reservations administered by the Federal government which owns all reservation land inhabited by indigenous peoples (Korman, 2010). Moreover, although the General Allotment Act (1887) recognised that each native had a right on their land, once they received their allotment (private property), the balance of each reserved territory was declared surplus

and made available to non-Indian settlers, reducing the indigenous territory by two-thirds (Churchill, 2002). Native people sought fair decisions in U.S. courts and refused to participate in allotments, but the Courts denied them their rights and with their refusal of allotments, the natives were left landless (Churchill, 2002). The policies of this period called the 'allotment and assimilation era' were based on the assumption that communal ownership perpetuates Indian's uncivilised organisation. Similarly in New Zealand, the colonial laws regarding indigenous land (Native title land Act 1862 and Native Lands Act 1865) were directed to eliminate communal lands in order to weaken the Maori social structure (Gilbert, 2006).

In 1946 the U.S. Federal Government founded the Indian Claims Commission (ICC), whose aim was to investigate the unfair treaties, but at the same time provide funds to assimilate indigenous peoples into the modern society. By this time, the Federal Government and the Congress enacted Laws aimed at abolishing native communities and implementing a relocation program for young Indians, creating many Indians ghettos in the country (Wunder, 1998). In Australia, programs for education, employment, and housing of indigenous families in white neighbourhoods were policies directed to eliminate indigenous traditions and communal organisation (Moran, 2005).

In Latin America, things were not any better. After independence from Spain in the 1820s, in countries like Peru, Ecuador and Bolivia the new elites in power faced two obstacles in their view to building a modern society: the existence of large indigenous populations and large extensions of indigenous communal land (Galindo, 2010). The answer the elites found to this impasse was the application of policies of assimilation and exclusion, which included forced conversion to Christianity, compulsory use of Spanish language, or open genocide (Sanders, 1989). The elites sought to construct the new republics as European, Catholic and white countries with no place for indigenous peoples (Arocena, 2008).

These measures converted many indigenous people into servants (peons) of large landowners or estates (*haciendas*) owners (Galindo, 2010). Although agrarian reforms during the decades of the fifties, sixties and seventies across Latin America, for first time since the colonial era recognised indigenous land claims, the reforms consolidated the process of inclusion by granting them political, social and economic rights, not as indigenous peoples with specific cultural identities, rather as peasants with an economic and homogenous status (Arocena, 2008).

In the global North as in the South indigenous peoples were trapped in the inclusion/exclusion paradox. They were included insofar that they had to be integrated to the major political and economic goals, though excluded if they resisted the implementation of the state's macro-economic and social policies. By the middle of the last century, the integrationist strategy was consolidated in the Pátzcuaro Agreement (the outcome of the First Inter-American Indigenous Congress in Mexico in 1940), and the International Labour Organisation's Convention 107 of 1957, the latter ratified by all the independent countries of Latin America and the Caribbean. The Convention 107 established an open integrationist perspective and the mode to ensure indigenous inclusion into the dominant society was to provide education, technical training and economic assistance (Roldán, 2004; Sanders, 1989; Suagee, 1997; Stamatopoulou, 1994; Pitty, 2001). This approach did not represent a fundamental change in the essence

of assimilation policies of indigenous peoples but in the form. In other words, assimilation changed from a previously violent to a friendly assimilation.

3.2.3. Indigenous peoples in the era of multiculturalism

The recognition of indigenous rights in today's multicultural era has been beneficial for indigenous peoples since it has brought about the opportunity for the development of political activism in national and global settings. However, the legal and institutional framework of indigenous rights still is embedded in coloniality in the crucial aspects related to territorial and self-determination claims.

The ILO Convention 169 (1989) overcame the open assimilationist approach of ILO Convention 107, whose article 12 justified the displacement of indigenous people from their territories in the interest of national and economic development (Sweptson and Plant, 1985). The Convention 169 prohibits indigenous peoples' relocation without their consent. It does not however, require consent on issues related to the exploitation of natural resources found in indigenous land and only seeks to "establish or maintain procedures through which shall consult these peoples" (article 15). Thus, since the Convention 169 does not strongly protect territorial rights or the right to provide consent, it has been criticised because it does not firmly recognise indigenous self-determination (Suagee, 1997).

In the eighties, the UN initiated the process to design a Declaration of the Rights of Indigenous Peoples and created the UN Working Group on Indigenous Populations with this purpose. The participation of indigenous peoples increased considerably during its elaboration (Tennant, 1994) due to the expansion of the international indigenous peoples' movement as a global movement (Barsh, 1987; Oldham and Frank, 2008; Stamatopoulou, 1994; Gilbert, 2007). Thus, the 2007 Declaration of Rights of Indigenous Peoples (DRIP) was enacted after 20 years of negotiation and established a very progressive regulation, which included: the recognition of the principle of self-determination for indigenous peoples; strong protection of collective rights such as territorial rights and cultural identity; the general requirement of indigenous peoples' consent before the approval of any legal or administrative norms that might affect their collective rights (Oldham and Frank, 2008; Gilbert, 2007; Fromherz, 2008). Although the DRIP is not a binding instrument (according to International Law the declarations comprise a set of principles whereas the conventions establish binding rules), it has symbolic power and the capacity to orient policy-makers and judges.

Apart from the UN Declaration several other conventions exist at the regional level. The American Convention on Human Rights (1969) ratified by twenty-five American nations, has been interpreted by the Inter-American Commission and Court of Human Rights in favour of indigenous peoples. Similar interpretations have been made with the African Charter on Human and Peoples' Rights by the African Commission on Human and Peoples' Rights (Korman, 2010). Moreover, the rights of indigenous peoples has been developed by different international norms and institutions, such as the ILO, the World Bank, the IADB, the WIPO, and the different UN offices, forums and programs (Anaya, 2004).

This progress however, should be accurately analysed. The era of multiculturalism may be considered as one of cultural recognition for indigenous peoples, but not as an era of recognition of indigenous self-determination. First of all, although the DRIP has been celebrated for its strong recognition of collective rights, many provisions regarding these rights were left aside in the 1993 last draft. According to Engle (2011), these rights included collective rights to preserve and develop their specific cultural identities, to establish their own citizenship; and to determine individual responsibilities before their communities. Instead, the Declaration established a 'repugnancy clause' or liberal standards to assess the validity of indigenous legality considering it tolerable or backward and unacceptable. For Engle (2011), Article 46 (paragraph 2 and 3) that regulates this clause, asserts the protection of indigenous rights under the condition of not contradicting ambiguous standards of democracy, human rights, good governance and good faith. This clause and the previously mentioned omissions illustrate the fact that indigenous peoples accepted the supremacy of the human rights' framework over that of self-determination (Engle, 2011). However, the history of indigenous exclusion and violent inclusion confirms that the mere application of liberal rights for many indigenous peoples has its limitations.

These limitations are observed in the two main legal expressions of the era of multiculturalism: the doctrine of native title and free, prior and informed consultation/consent. These legal doctrines and their regulations, notwithstanding being largely celebrated, still do not ensure the complete security of indigenous peoples' territorial rights.

The native title doctrine was developed in the nineties by the Supreme Court of Canada and the High Court of Australia (Gilbert, 2007). Although this doctrine recognises that colonisation has not completely extinguished indigenous peoples' land rights, it does not recognise indigenous peoples' self-determination (Short, 2003). For example, in Australia, the native title claims procedure is based on the legal assumption that the Crown holds an underlying title to all land and resources of the country, so indigenous people can only make a claim to a native title where it has not previously been extinguished by the state. Even then, indigenous peoples can only make a claim if they can prove they have a continuing traditional connection to the territory in question, using the "white legal system's burden of proof requirements" (Pratt, 2004: p. 58). Thus, the onus of proof lies with the indigenous peoples, whereas in a system that would truly recognise indigenous peoples' self-determination, it would be the other way around (Fitzpatrick, 2002; Pratt, 2004). Moreover, a native title is weaker than a non-native title because it is subject to strong legal limitations, such as the fact that the land can only be alienated to the Crown and the state holds the power to extinguish the title without consultation and compensation (Patton, 2000; Dodds, 1998; Gilbert, 2007).

The right of indigenous people to free, prior and informed consultation/consent before the approval of any norm that may affect their collective rights is often regarded as the most important achievement of the era of multiculturalism. This consent must be expressed in accordance with indigenous norms, without coercion or manipulation, and in language and process comprehensible to the affected communities (MacKay, 2005). However, consent regulation and application is very contentious.

The Inter-American System of Human Rights has developed this right however, countries such as the U.S. and Canada are not active members of the system and reject

the decisions and recommendations emitted by the Court and the Commission of Human Rights (Page, 2004; Pasqualucci, 2009). Furthermore, a critical analysis shows that the decisions of the Inter-American Court have been less protective than the DRIP regulation (Pasqualucci, 2009). In the most important decision on the right to consent (*Saramaka* vs. Suriname), the Court asserted that consent is necessary in cases of “large-scale development or investment projects that would have a major impact” on “a large part of their territory”, whereas the DRIP establishes in general terms that “free and informed consent prior to the approval of any project affecting their lands or territories and other resources” is necessary (Pasqualucci, 2009: p. 90). Namely, the DRIP establishes the requirement of consent regarding the possible impact on indigenous territory in general, and the Court requires the consent only if a major extension of the territory would be affected. This ambiguity allows for certain interpretations according to which extractive activities that won’t affect the whole territory but only an important part of it would not require the consent of indigenous peoples but only their consultation. The last decision of the Court on the issue (*Sarayaku* vs. Ecuador, 2012) does not go further into the recognition of the right of consent.

Another challenge regarding the recognition of indigenous rights is that the globalisation of indigenous rights and specifically the right of consultation appear to have been co-opted by public global institutions such as the World Bank, the Inter-American Development Bank (IADB), among others, and important private organisations such as the International Council on Mining and Metals (ICMM). All of these mentioned institutions recognise the right of consultation but not the right of indigenous peoples to provide consent. For instance, according to the Operational Policy 4.10 of the World Bank regarding projects that could cause impact on indigenous peoples, the borrower has to develop a process of *consultation* with indigenous communities, but it is not a requirement to gain their *consent* (MacKay, 2002). For Rodriguez-Garavito (2011), this appropriation of consultation by governance entities committed to the discourse of economic development, shows how easily it becomes embedded in the global political economy. Consultation becomes thus a business device for companies to achieve the status of following corporate social responsibility codes of conduct and obtaining social licence to operate.

Hence, consultation/consent loses its emancipatory potential by being embedded in liberal legality and its connection to the political economy. In the jurisprudence of the Inter-American Court, classic individual rights such as property have been re-shaped to ‘accommodate’ communal rights (*Awas Tingni* vs. Nicaragua, 2001). The problem with this accommodation is that indigenous legality can be easily re-appropriated by those that propose Western standards. Goodland (2004) for example, points out that the right to consent may well be recognised but according to a Western view of requiring a majority of 51% (while indigenous people tend to seek consensus when giving consent).

Therefore, indigenous peoples’ territorial rights are in a way universally recognised but not universally respected (Barsh, 2001). This fact is illustrated by the states’ efforts to attract foreign direct investments for the development of extractives activities within indigenous territories without respecting the decision of the people affected. Thus, the legal recognition of indigenous rights accompanies new forms of accumulation, while in the past farmers and settlers were the beneficiaries of land dispossession, today these are the transnational corporations (Sieder, 2011; Barsh, 2001).

Hence, the dominant political economy puts limits on the recognition of indigenous rights in various ways. These limitations occur when transnational corporations promise important revenues to governments in exchange for massive exploitation of natural resources and hence governments tend to favour revenues over rights. International agencies and consultants also tend to consider extractive projects as a means for crucial anti-poverty schemes and international financial institutions continue to promote extractive projects while recognising the rights of indigenous peoples though in relation to social and economic participation in projects (Satterthwaite and Hurwitz, 2005). This situation perpetuates because of the unequal balance of power between indigenous communities, national governments and extractive industries. It is often the case that indigenous peoples lack funds, technical expertise and political power (Page, 2004).

In sum, one can observe different patterns of exclusion and inclusion in colonial/post-colonial contexts. These include: mechanisms of open exclusion and negation of legal subjectivity (discovery, just war, *terra nullius*) during the colonial era; mechanisms of assimilation (implementation of treaty making, private property rights, and national policies of economic and social integration) during the first decades of independence of the new republics; and mechanisms of friendly assimilation (native title, consultation) during the current multicultural era. However, in all these cases there is a core question that is not addressed, namely: a political space that denies real self-determination of indigenous peoples while at the same time offers instruments that can be used in the struggle for the recognition of indigenous peoples' self-determination.

3.3. Liberal multiculturalism and indigenous peoples

The political foundation of liberal legality today is multiculturalism. This foundation however, has attempted to accommodate indigenous aspirations within a liberal legality without respecting the different ontological and epistemological indigenous perspectives. In this section, I discuss the theoretical basis of multiculturalism and how it falls short of fully expressing the meaning of self-determination of indigenous peoples.

3.3.1. Political foundations of multiculturalism

The processes of inclusion/exclusion previously analysed have not been critically addressed by the political philosophy of liberal multiculturalism, on the contrary, since multiculturalism emphasises the notion of minority rights and the superficial view on redistribution, it obscures the character of indigenous peoples as nations with territorial rights. In this section it is not my purpose to analyse the theoretical debates on multiculturalism in detail but to discuss the critical points in order to illustrate its inherent tensions.

Kymlicka (1995) proposed the most known approach on multiculturalism defined by the special protection for 'cultural minorities'. For Kymlicka, traditional human rights cannot solve issues related to a multicultural society, such as the right to maintain the mother language in parliament, courts and administration or the respect of specific cultural practices. It is then necessary to supplement them with minority rights. However, these special rights can be abused by those with intolerant and nationalist intentions, so minority rights have to be limited by principles of individual rights and

democracy. Thus, Kymlicka does not renounce assimilation. He proposes the recognition and accommodation of minority identities by focusing in the renegotiation of the conditions of integration between minorities and the majority, (Van den Anker, 2007) without displacing classic liberal models (Povinelli, 2002). For Kymlicka (1995) many of the demands of ethnic and national groups are congruent with liberal principles, nonetheless, if any of these groups fails to recognise to its members a degree of personal choice that the state recognises to all citizens, the liberal framework must be imposed (Rosen, 1997).

Taylor (1994, cited by Tempelman, 1999) stresses the differences between cultures and emphasises the dangers of ethnocentrism that evaluates particular cultures according to the standards of its own culture. Cultural communities deserve protection because they provide their members with the basis for their identity; in the view of Taylor, membership is the precondition of human agency. Thus, political recognition goes further than protecting individual rights to culture. It entails a politics of the common good in which collective goals are the object of public policy. However, similar to Kymlicka, this does not imply that all cultures are equally acceptable since for Taylor, liberal democracy should only recognise cultures that respect diversity and that offer adequate protection for basic human rights.

Parekh's analysis (2004) is different from both Kymlicka and Taylor. He defines a multicultural society as one composed of two or more cultural communities. Society might respond to its cultural diversity in two ways: respect the different cultural demands (multiculturalism) or assimilate these communities into its mainstream culture (monoculturalism). Thus, for Parekh (2004), multiculturalism is not about minorities, it is about the proper terms of negotiation between different cultural communities. This negotiation must be ruled by norms proposed not only for one culture, but elaborated through an open and equal dialogue. Moreover, he argues that no political doctrine can represent the full truth of human life, each one is embedded in a particular culture, representing a particular vision of the good life. Liberalism, for example, is an important political doctrine that emphasises dignity, autonomy, liberty and equality, but at the same time it marginalises important values such as solidarity, selflessness or empathy. Since every political doctrine is partial, no single one can be the unique basis of a good society.

Parekh does not observe different peoples as separate cultural collectives (as Taylor) and avoids the universalistic attitude towards groups that do not share liberal principles (as Kymlicka). Instead, he advances a politics of cultural recognition that acknowledges internal differences and the possibility of change through negotiation. The problem is that this may work in situations of accommodation of different cultural groups within a stable society. But this view cannot explain the situation in which the participation in the larger society is requested by some groups according to their own views (Tempelman, 1999). These groups may not accept a friendly and negotiated accommodation.

Whereas Kymlicka, Taylor and Parekh discuss the form and content of the 'accommodation' process within liberal societies, other scholars question the very idea of multiculturalism. The conservative critique asserts that multiculturalism exacerbates the marginalisation of minority groups by exalting the cultural differences and in this way it also facilitates the aggression of human rights inside the groups and endangers, in

general, the liberal democratic system (Beckett and Macey, 2001; West, 2005). However, the fact that liberal democracies have survived decades of multicultural policies seems to reject this catastrophic view.

On the other hand, the critique from the Left has focused on the empty goals and outcomes of multicultural policies because those policies do not emphasise the more important issues of race and class. This critique points out that inequality and exploitation have been converted into mere problems of intolerance due to: “the liberal multiculturalist’s basic ideological operation: the culturalisation of politics” (Žižek, 2008: p. 660). Thus, according to Žižek (2008) political differences conditioned by political inequality and economic exploitation are naturalised and neutralised into mere cultural differences.

The result of these critiques is the emergence of a post-multicultural literature (see Kymlicka, 2010). Post-multicultural scholars characterise multiculturalism as a mere celebration of cultural diversity (its customs, traditions, music and cuisine) but ignore the economic inequality of the society and power inequalities within ethnic groups and affirms a static and impermeable notion of culture. Kymlicka (2010) responds to these critiques by showing how multicultural policies are committed to universal human rights by not allowing the accommodation of illiberal cultural practices (thus, avoiding the conservative critiques) and implement redistributive measures (thus, avoiding the Left critiques). Hence, he argues that the three main examples of multiculturalism (indigenous peoples, nationalistic minorities and immigrants) combine policies of cultural recognition, economic redistribution and political participation.

This optimistic view is the celebration of welfare liberalism that while it supports some progressive moments in the recognition of rights, it is not committed to a deep analysis of social structures. In other words, the politics of multiculturalism is connected to postmodern politics and its inability to critically analyse the political economy. It is paradigmatic to observe the recurrent example provided by Kymlicka to support the redistributive aspect of multiculturalism: indigenous’ land rights. As I developed in the previous section, indigenous territorial rights are not assured today by liberal legality, on the contrary, multicultural state policies often establish mechanisms to restrict and overcome these rights.

3.3.2. Multiculturalism and indigenous peoples: Self-determination or accommodation?

A key word in the debate on multiculturalism is accommodation. This word is used by Kymlicka, Parekh and Taylor to explain how the different ethnic minorities can be accommodated into a reformed liberal state by providing special rights (Kymlicka, Taylor) or by an intercultural dialogue (Parekh). In any case, the very idea of accommodation presupposes hierarchy and the exercise of power on indigenous peoples and their territories. This has been evident in the long history of integration, assimilation, incorporation and lastly, accommodation of indigenous peoples.

Accommodation practices are usually achieved through a tactic that Eudaily (2004) calls neo-ornamentalism: the foundations of indigenous rights are portrayed in Western principles. Thus, James Anaya (2004) approaches the dispossession of indigenous land as an issue of cultural discrimination: contemporary indigenous rights claims are valid

under International Law because Western legality is sufficiently malleable and tolerant to admit indigenous values (Rosen, 1997). Similarly, Kymlicka argues that indigenous self-determination is not directed at rectifying past injustices, on the contrary, this right is based on the fact that indigenous self-government should be recognised by settler states. Kymlicka and other liberals justify indigenous rights by connecting them to the Western political tradition (Eudaily, 2004).

For James Tully (1995) indigenous peoples' struggles are special examples of the politics of cultural recognition, the 'strange multiplicity' of Other voices that demand a space in their own cultural and political terms and in the constitution of modern political associations. Therefore, the dominant constitutional system that emphasises the unity of nation-states should be supplemented by a project of just recognition through multinational federations. Tully (1995) finds that the Western Common Law system can serve as a model for a federal system that include indigenous nations, since prior to colonisation, indigenous populations were formed by political units that negotiated among themselves the access and entitlement to resources.

Tully's arguments are very progressive and his proposal entails the recognition of indigenous self-determination in its political and juridical form. One observation, however, is that he does not define the relation between the indigenous nations with the Federal government, which could express the paradox inclusion/exclusion by subjecting the indigenous nations to the *imperium* of the dominant state. Moreover, he still is unable to recognise indigenous principles without matching them with the liberal framework. Indeed, it is important to go beyond this framework: "neither the assumption that indigenous peoples join us in sharing liberal values, nor the representation of their claims by means of images from our own past can cover up the tensions... liberalism's gaze must ... recognise its own limited field of view, and accept those who call to it from beyond its horizon" (Eudaily, 2004: p. 197).

As Povinelli (2002) asserts, postcolonial struggles are different from multicultural ones. The former is led by the colonised through strategies of counter-hegemony or autonomy (see 2.4.4) while the latter is dominated by the 'majority' and the strategy of providing the Other the possibility of being represented as a traditional and domesticated ethnic group. In that context, before recognising indigenous peoples in any of its liberal forms, the profound connection between the politics of recognition and the politics of domination and capital must be acknowledged: "What is the nation recognising, capital commodifying and the court trying to save from the breach of history when difference is recognised?" (Povinelli, 2002: p.17). This is the question that the political philosophy on multiculturalism does not answer.

Multicultural liberals propose indigenous participation within liberal institutions, and their solutions to the conflicts between indigenous and Western views are framed in a liberal discourse of rights that has been historically forced upon indigenous peoples. Thus, the accommodation formula in the end is not very different from the assimilation or integration proposals. In all of these discourses, liberals admit cultural protection for indigenous peoples only if they accept to be governed by liberal and capitalist principles. What indigenous self-determination proposes to multicultural liberalism is something different. Here it is not about inclusion or exclusion vis-à-vis the liberal system in which case the intercultural dialogue is not directed to define the terms of

inclusion, rather to define the terms of the constant *interactions* between the indigenous self-determination and the liberal legality.

Consequently, and in contrast to accommodation, the principle of self-determination allows the strong rejection of the idea that indigenous rights are minority rights (Kymlicka) or cultural rights (Anaya). From the multicultural perspective, minority rights entail the respect that must be exerted towards the individuals that belong to minority groups within a majoritarian society. Indigenous rights, in contrast, have as premise that indigenous peoples have the right to preserve their societies outside the dominant society (Åhrén, 2009).

Regarding cultural rights, those are seen as a third generation of human rights³ that include collective rights of indigenous peoples. However, this very conceptualisation is embedded in coloniality since it corresponds to a historical sequence and hierarchy in which liberal individual rights are in the first historical and ontological position (see Barreto, 2013). In contrast, for indigenous peoples, self-determination as a collective right is the first right in time and supremacy. This foundational right establishes a whole legality that has not only cultural but also political and economic principles and therefore, this legality is not related merely to a culture but to a specific political economy (see next chapter).

Therefore, the attempts to accommodate indigenous peoples within the liberal conceptual and political tools of multiculturalism are misleading. The respect of indigenous peoples must start, not by defining the terms of accommodation but by defining a new political space in which all the dimensions of indigenous self-determination are taken seriously.

3.3.3 Liberal multiculturalism in Latin America

The concept of multiculturalism has been imported to Latin America to explain the relation between the state and indigenous peoples. However, it has emphasised issues of political participation and integration of indigenous peoples within the national system without evaluating the indigenous claims of territoriality and self-determination.

The multicultural debate has specific features in Latin America. First of all because of the large amount of indigenous population: there are two countries (Bolivia, Guatemala) where indigenous populations comprise a majority and at least three countries (Mexico, Ecuador, Peru) where the indigenous population is very high, between 10% and 40% of the whole (Van Cott, 2006). In this context, Latin American multiculturalism was consolidated in the 1990s due to three factors: the emergence of indigenous political movements; the development of pro-indigenous international jurisprudence; and constitutional reforms (Sieder, 2002). Indeed, Latin American constitutionalism became multicultural by recognising collective rights to indigenous peoples, such as collective property, the respect of their customs, bilingual education, among others (Horton, 2006). Van Cott (2000) argues that this trend expresses ‘a friendly liquidation of the past’ in overcoming centuries of discrimination, exploitation and marginalisation.

³ The first generation refers to individual rights of 18th century liberalism; the second refers to the social and economic rights based on the social concerns raised by socialism; and the third generation of rights responds to the concern of indigenous marginalization in the still colonial world of the last century.

According to the comparative study of Van Cott (2006) the multicultural policies (MCPs) enacted during the nineties have been positive because all Latin American countries recognise some constitutional rights for indigenous peoples, such as the recognition of collective land rights and customary indigenous rules. Those countries classified by Van Cott as 'strong' recognise some degree of autonomy for indigenous peoples (control over a territorial space and the recognition of indigenous systems of justice), collective land rights, the recognition of customary law, and language rights. Although Brazil and Paraguay also recognise some MCPs, in these countries the degree of autonomy is weaker so they remain in the group of 'modest countries'. In addition, Van Cott asserts that countries with relatively small indigenous populations (Colombia, Venezuela, Panama) adopted the most protective regimes, while countries with relatively large indigenous populations (Bolivia, Guatemala, Mexico, Peru) adopted less protective ones. The only exception of a country with large indigenous population and strong indigenous policies is Ecuador.

Van Cott (2006) also found that the countries that had the most intense structural reforms (Argentina, Chile, and Peru) have weak MCPs, while the two countries whose adjustments were less painful (Ecuador and Venezuela) have developed more MCPs. Thus, she observes an inverse relationship between the strength of multicultural policies and structural reforms. In addition, she argues that four countries with high level of inflation did not enact strong MCPs, whereas the three countries with the strongest recognition of indigenous rights (Colombia, Ecuador, Venezuela) experienced only moderate inflation in the pre-reform period. Thus, she concludes that intense economic crisis empowers neoliberal elites, making it more difficult for indigenous peoples to achieve multicultural policies, whereas low levels of economic crisis facilitate the struggle for the recognition of indigenous rights.

Van Cott (2006) holds that the MCPs in Latin America have been beneficial because they provide a basis for the articulation of indigenous demands in the formal political system. Moreover, she argues that although most indigenous organisations criticise neoliberalism and globalisation, their economic claims can be satisfied by a capitalist welfare state (Van Cott, 2006). Van Cott (2006) argues that indigenous peoples could seek some degrees of political and administrative autonomy and economic redistribution through state social programmes (for example, access to credit, market assistance, and agricultural subsidies) in order to compete within the capitalist economic model. Therefore, for Van Cott, the decentralisation implemented in Bolivian and Colombian multicultural constitutional reforms (in the nineties), as part of the neoliberal economic and state reforms, was a beneficial policy because it reinforced municipal and regional authority, facilitating transparency and accountability of the resources.

Some authors observe a different relationship between MCPs and economic policies. They argue that political elites admit some multicultural rights in order to avoid more radical demands, in a sense multiculturalism is considered as an instrument to ensure the power of neoliberal governments, rather than expressing a real commitment to indigenous peoples (Sieder, 2011). Thus, indigenous participation in the political system and in policymaking is highly symbolic because the political elites only accept a limited number of claims (Horton, 2006).

According to Hale (2005), Latin American elites promote cultural rights with very rigid conceptual and political boundaries and insofar as they do not constitute challenges to

the neoliberal project. On the contrary, they consolidate this project by not contradicting the foundations of the economic development model, and by not re-structuring the political space in a way that could diminish the elite's power. Indigenous activism, thus, occupies a space allowed for political and economic elites (they become *indios permitidos*), obtaining some important achievements related to their cultural recognition but losing the possibility to articulate other fundamental and necessary claims (Hale, 2005).

I suggest that Van Cott's conclusions are questionable because her analysis on autonomy over-emphasises cultural and political rights of participation. She does not discuss in detail the problems of the legal and political configuration of territorial rights and self-determination. A real recognition of these foundational rights have not been ensured neither by the most celebrated doctrines on indigenous rights (native title and consultation), nor by binding international instruments; in fact, neither by Latin American constitutionalism. If the analysis would focus on critical issues such as the dominium on nature, the strong recognition of indigenous territories and the necessity of consent (not consultation), not one country in Latin America (or elsewhere) would be regarded as having a 'strong' legal framework of protection of indigenous rights.

It is true that liberal multiculturalism has opened a space for the expression of indigenous voices, facilitating pro-indigenous policies and legislation, but it is necessary to acknowledge the limits of that space and its content. Thus, political participation, cultural rights, decentralisation and judicial and administrative autonomy, are all outcomes that have been provided under the implicit condition not to challenge the political economy.

In sum, multiculturalism in the political philosophical debates and in the policy-making experience in Latin America, is restricted to the recognition of indigenous peoples within the liberal framework, without taking its differences with indigenous ontologies and epistemologies seriously. The relation between indigenous claims and the political economy and the necessity to rethink the whole liberal capitalist political space is essential in order to truly respect indigenous peoples beyond accommodation or other types of inclusion. Key notions such as plurinationality and inter-culturality are emerging in Latin America to overcome liberal multiculturalism. I will focus on these notions in the next chapter. However, for now, I wish to discuss whether in spite of its limitations, liberal multiculturalism can be used for pursuing indigenous political agendas.

3.4. Assessing the politics of multicultural liberal legality

In this section, I analyse the use of liberal legality by indigenous peoples to achieve their political goals related to self-determination and territoriality. I propose to theorise indigenous rights from non-Western theoretical frameworks in order to transcend the inclusion/exclusion paradox and the individual perspective on rights in the political philosophy.

3.4.1. The potentiality and limitations of liberal legality

In spite of the limitations of today's multicultural liberal legality, the legal framework of human rights are seen by many scholars and activists as unavoidable instruments to achieve social justice. Taking into account that the conflicts between indigenous territorial rights and extractive industries are mediated by liberal devices, it is important to analyse the potentials and shortcomings of the practice and theory of liberal legality for indigenous peoples.

Modern legal theory is rooted in the Natural Law tradition of Vitoria and its justification of just wars against the Indians (on behalf of God during the hegemonic rule of the Roman-Catholic Church; and on behalf of reason and civilisation with the emergence of the European nation state system). After the liberal reforms and revolutions the 'will theory' emerged as a principle and methodological explanation of the logic of Private Law (based on the protection of property and freedom of contract) and Public Law (based on a social contract that supported the liberal state) (Villey, 1996). On this basis, the German historical school of the 19th century constructed a formal theory of Law which says that any legal system is an internally coherent structure that reflects the normative order of an underlying society. Thus, legal theory became a positivistic and formal theory and an apolitical project (Kennedy, 2004).

In this way Law and liberal legality came to be synonyms: a neutral and abstract structure of norms and legal principles completely detached from colonialism and capitalist expansion (Merino, 2013). Weber celebrated this theoretical model as a formal and scientific paradigm, then, other perspectives on the juridical were irrational 'anti-formal tendencies of modern Law' (Kennedy, 2004: p. 1052), such as Marxism and Schmitt's decisionism (see 2.2). Liberal legality, however, remained attached to a specific nation-state, and the fact that the anti-formal juridical paradigms accompanied totalitarian political projects such as communism and fascism, led to the argument that the only path of civilisation and humanity was the reform and reinforcement of the liberal system.

Indeed, as a result of the tragic consequences of the Second World War, the academia and global-policymakers proposed the strengthening of liberal legality and human rights. Hannah Arendt (1973) criticised the fact that, for the international system, the protection of human rights depended on the formal recognition of the state (citizenship). She then proposes 'the right to have rights' as a right of any person to belong to the humanity and as such this right must be protected not only by specific states but by the whole of humanity. It could be said that the 'right to have rights' is the theoretical foundation of the modern system of human rights composed by declarations, international courts, agencies, etc. and the allegations that universal human rights overcome ideologies and cultures (Zechenter, 1997).

In this context, the debates between cultural relativism and universalism emerged. The cultural relativist approach became evident when the American Anthropological Association (AAA) criticised the Universal Declaration of Human Rights of 1948 because of its omission of collective rights and the over-emphasis of individual-liberal rights (Brown, 2008). Cultural relativists also criticised the universalism of human rights and its de-contextualisation by ignoring social and institutional factors in the recognition and exercise of rights (Pollis, 2000, Donnelly, 1984; Brown, 1997). The universalist response typically highlights how relativist arguments can justify authoritarian governments (Pollis, 2000, Harris-Short, 2003; Orend, 2002). They propose a particular intercultural dialogue that would allow for the universalisation of rights (Na'im, 1992) or the identification of universal principles for the good life (Nussbaum, 1997), or the inclusion of Others (Howard, 1995), or the development of formulas in which universal values could be internalised by any culture (Zechenter, 1997).

This kind of intercultural dialogue is problematic. It does not propose a real dialogue because it assumes the liberal framework as given and inexorable. In fact, the inclusion proposed is directed to deny cultural differences and the abstract consensus proposed remains highly transcendental and empty, disregarding the real social dynamics in the recognition and exercise of rights.

In this scenario, a new group of scholars who emphasise the use and construction of human rights by social movements has been emerging in the last few years. These scholars critically engage with the discourse and institutions of human rights (contrary to Marxists and cultural relativists) in order to use them for emancipatory agendas (Santos, 2002; Stammers, 1999). Thus, human rights are observed as tools for the subalterns (Onazi, 2009) and counter-hegemonic struggles (Rajagopal, 2006). Santos (2002) argues that hegemonic devices such as liberal rights and laws can be used for non-hegemonic agendas, moreover, liberal strategies can be very useful for these aims: "Law is not emancipatory or non-emancipatory; emancipatory or non-emancipatory are the movements, the organisations of the subaltern cosmopolitan groups that resort to law to advance their struggles" (Santos, 2002: p. 495).

From my perspective this approach is problematic because it tends to exalt certain neutrality of liberal legality and omits the fact that it is embedded in capitalism and Western modernity. The limitations of the use of the liberal framework by indigenous peoples illustrate this problem. When the indigenous movement became an international movement in the seventies, human rights was not thought to be a proper discourse for their claims because this discourse was seen as an expression of the civilising rhetoric of colonialism (Engle, 2011). According to Engle (2011) the main strategy for indigenous peoples in Latin America was self-determination or autonomy (indeed indigenous peoples used different words to express the same idea, such as the governance of their territory and social organisation). Thus, influenced by the anti-colonialist movement, indigenous movements used the international legal framework based on self-determination instead of human rights to move their agenda forward.

However, as the international system was reluctant to listen to indigenous movements, they had to adapt their claims to the institutional framework of human rights. They have obtained consequently favourable decisions at International Courts, but also many

difficulties exist, such as the lack of enforcement, lack of recognition of territorial rights and the right of consent, the expansion of extractivist activities, among other issues already mentioned.

Kennedy (2005) argues that the dominant discourse and institutionality of human rights des-emphasises other important emancipatory strategies. In fact, international instruments and discourses highlight terms such as human rights, consultation or participation, but at the same time obscure other important terms such as self-determination, territorial rights or indigenous consent (Merino, 2013). It is also relevant to note that the emphasis on participation over redistribution is problematic in the current human rights discourse (Kennedy, 2005). This is evident with the decreasing attention given to social and economic rights (Etham, 1995; Leckie, 1998), even though these have been established in the Universal Declaration of 1948 and in the International Covenant on Economic, Social and Cultural Rights (ICESCR).

3.4.2. Critical Western perspectives on liberal legality

The use of liberal legality has several limitations for indigenous self-determination; however, this does not necessarily mean that indigenous peoples engage with the approaches that criticise human rights from a perspective of radical politics. On the contrary, radical politics many times obscure the fact that indigenous peoples use liberal legality to express their indigeneity without losing their foundational principles. This complex process of ‘appropriation’ and at the same time ‘going beyond’ liberal legality represents a project directed to decolonise human rights.

The radical critiques on rights are geared to question the foundation of the international system of human rights: ‘the right to have rights’ first proposed by Hannah Arendt as the abstract right of a human as such that justifies its incursion within the national or international political community. This incursion is assured by the international system, which is a reason why these original rights become ‘humanitarian rights’ or the rights of those who cannot politically enact their rights (Rancière, 2004). For Arendt, then, the political entails the interactions between human beings that are recognised as equals within a public sphere, omitting that those who are not considered as equals can also exert their politics (Schaap, 2011).

This proposition has been criticised through the following: if one identifies the original subject of rights as those that have nothing but its abstractness as human beings, a space is created in which powerful Western regimes can enact those rights through political and military interventions (Rancière, 2004; Žižek, 2005). Miéville (2005) rightly asserts that this emptiness might be occupied also by progressive discourses, however, by persisting in abstracting human rights it can be re-appropriated by hegemonic powers. The substance of human rights is then an abstract rationality, a principle that not only obscures actual inequalities but also justifies the liberal principles that allow those inequalities to persist (Peterson, 1990). For these reasons, Schaap (2011) argues that Arendt’s proposition on human rights not only entails its depolitisation but could also justify the politics of unilateral humanitarian interventions.

Similar to Arendt, Agamben identifies a subject with no possibility to enact their rights, although this would be precisely perpetuated by liberal legality. In Agamben’s view (2008) there is no space for the bare human within the liberal political order: the

refugee, the stateless, etc. are exceptional and temporary conditions that must be either included into or excluded from the political system. Some authors have reflected on indigenous perspectives in Agambenian terms and argue that the whole colonial project was imposed as an exception which permitted the elimination of indigenous peoples (Morgensen, 2011; Rifkin, 2009). Indeed, indigenous people have been the paradigmatic non-human, non-citizen, *homines sacri* considering they have been openly exterminated or displaced to zones of exceptions such as reserves, missionary camps, and other legal forms under the protection of the sovereign (Havemann, 2005).

Agamben (2005) asserts that everyone incorporated into Western law may be assigned to the state of exception. It is important to add that today we are exposed to a state of exceptions not because we are equals before Law, but because in one way or another we all are trapped within the colonial hierarchies embedded in the discourse and structures of the nation-state (Morgensen, 2011). Thus, in spite of the rhetoric, indigenous peoples still live in a constant state of exception. For example, the native title does not avoid the possibility of unilateral extinguishment of indigenous territorial rights; consultation does not ensure the respect of indigenous territories; all Latin American constitutions, even the most progressive, establish as an 'exception' that the state can exploit natural resources located in indigenous areas.

Hardt and Negri (2009) criticise the fact that Agamben does not discuss the possibility of biopolitical resistance. Thus, Hardt and Negri criticise Agamben in the same way Rancière does of Arendt for the lack of politics of those excluded. In the specific case of indigenous peoples, this lack of politics refers to the fact of neglecting territorial claims. The biopolitical project of the nation state that might include or exclude indigenous peoples is supported by a national-territorial geopolitical project, which could displace any political formation as *bare habitation* (Rifkin, 2009). According to Rifkin (2009) by conceiving bio-politics without geopolitics and bare life without *bare habitation*, Agamben's analysis results in an omission of the politics of territoriality. And this issue is the very essence of indigenous politics.

A similar limitation is observed in the radical political account of Costas Douzinas (2010), who asserts that a truly re-politisation of rights must be found not in the struggle of the bare lives to enact their equality (as Rancière) but in the right of resistance/revolution. Costas undertakes a historical analysis of this right in the Western tradition and found that in the French revolution, resistance and revolution were not only a radical socio-political shift, but a modernity device and normative principle, in other words: the right to resist and overcome oppression was understood as the most important freedom. The Declaration of the rights of man and citizens, however, rejected this right because the constituent power adopted Kant's ethics against instability. The subsequent human rights discourses not only omitted this right but also proscribed it. The Universal Declaration of Human Rights (1948), for example, establishes in its article 30 the prohibition to undertake radical transformations to the legal and political system: "the reversal of priorities between the right to revolution and substantive rights was complete" (Douzinas, 2010: p. 93). As a result, formal human rights were transformed into a liberal padlock of a hegemonic system in which any political claim is isolated and converted into a technical and specific disagreement that must be institutionalised. In this way, human rights respond to the logic of the de-politisation of politics.

Douzinias (2010) proposes to re-politicise politics by going beyond Rancière arguments. As rights became an important device of hegemonic politics, instead of trying to achieve equality with these rights, he suggests that the communists' axioms are the only ones that can properly re-politicise rights. These axioms are directed to justify the right to resistance/revolution in order to overcome the current social order. This proposition is directed to legally support what Derrida (1992) calls the 'mystical foundation of authority' or the founding violence. By suspending the legality, this violence justifies itself with the argument that creating a new order would replace the oppressed one. This revolution is blamed for being brutal and illegal but it is legitimated retrospectively by expressing the immanent right to resist and overcome injustices (Douzinias, 2010). This entails a 'right to Law' that represents the foundation of the state and the immanent right to resistance.

3.4.3. Decolonial human rights: struggling for the 'right to have communal rights'

A decolonial perspective can provide a different critique of rights that might better explain the essence of territorial rights and self-determination. The fundamental premise of Western thinking to understand individual rights is the distinction between human beings and nature as subject and object of property. In the philosophical terms firstly proposed by Locke, a human being exerts his right of property on his own body and on nature as a resource; and on the outcomes (material and immaterial) obtained from these original entitlements. Thus, the state territorial sovereignty has as primary role the protection of their citizen's property rights.

For most indigenous peoples individual rights are not the only relevant rights, but there are also communal or collective rights based on their special relation to their territory. These two kinds of rights are interdependent and are based on indigenous self-determination. In this context, the main role of self-determination and territoriality is not to divide and protect specific ownerships, but to govern a society composed by social relations that encompass the entire collective. Thus, the indigenous socio-economic system is oriented to the social and economic reproduction of the collective, and the material and non-material benefits provided to each member is not understood only in terms of individual gratification but in terms of general welfare (Rivera, 1990; Holder and Corntassel, 2002).

Furthermore, nature is not understood as 'natural resource' but as a being. This cosmology (recognised in the Ecuadorian constitution) expresses the acute differences and tensions between liberal capitalism and most indigenous legal and economic systems. Clearly, indigenous peoples have very different institutional designs, but many of them also organise their norms and institutions around communal principles. However, in spite of its importance, the dominant liberal model undermines and marginalises indigenous identities, socioeconomic organisation and political practices (Rivera, 1990).

The metaphor 'savages-victims-saviours' exemplifies how the construction of human rights denies indigenous perspectives. This metaphor - located at the centre of the human rights discourse - is criticised because it portrays the Western superiority to save the Others (Mutua, 2001; Abu-Lughod, 2002). Thus, the appropriation of de-politicised human rights for humanitarian interventions could be analysed not only from Rancière's

radical politics, but also from decolonial thinking. In fact, the issue is not solely how to re-politicise human rights but how to understand the meaning of humanity from non-Western perspectives and how this understanding might re-configure the frontiers of the political.

Mignolo (2009) undertakes a critical historical analysis to decolonise the meaning of humanity. He identifies the notions of 'man' and 'humans' in the theoretical elaborations of the 15th and 16th century European humanists. They used these notions to establish a freedom space vis-à-vis the Church and to differentiate themselves from other communities perceived as opponents: "the humanist was the one who placed himself in relation to the Saracens or Easterner, placed himself as Westerner, and Easterners were defined by Westerners as if Westerners had the universal authority to name without being named in return" (Mignolo, 2009: p. 8).

With the liberal consolidation after 17th and 18th century's reforms and revolutions, the notion of humanity was detached from its Christian form and converted into a secular and bourgeois one (Mignolo, 2009). This new notion of humanity was inserted in the Declaration on the Rights of Man and Citizen of 1789 in a context in which the new system of European nation states overcame the notion of 'nation' connected to the *ius gentium* of the Roman Church. In this new political scenario the new political and legal status of the citizen is in opposition to the 'foreigner', which "enriched the list of exterior human, next to pagan, Saracens, Blacks, Indians, women, non-normative sexual preferences" (Mignolo, 2009: p. 14).

Finally, the idea of human remained as an inexorable Western concept in the Universal Declaration of Human Rights of 1948. The difference was that the notion corresponds to a new post-war context in which the ranking of the world regions was led by the U.S.: "First, Second, Third World and Fourth World for indigenous peoples ... What was hidden was that the classification was made from the perspective of the First and not from the Second, Third or Fourth World" (Mignolo, 2009: p. 16).

In sum, the constitution and implementation of liberal legality and human rights have been founded on Western ontological and epistemological premise of superiority (Mignolo, 2009). The response that Mignolo (2009; 2011) proposes to this reality is epistemic disobedience: to deny this universalism and arbitrariness and assert that the conception of humanity must not necessarily be rooted in Kantian or Christian premises, but it also can be developed from Aymara, Arabic or any non-Western culture.

The decolonial perspective, therefore, might be very useful to develop a critique of humanitarian intervention. Indeed, the de-politicisation of rights is only one of the features of humanitarian intervention and most profoundly it refers to the control of the meaning of humanity. Hinkelammert (2004) points out how in history the rights of the Others have been eliminated under the argument of defending human rights. He names this rhetorical device the 'inversion of human rights' because conducts such as cannibalism or widow sacrifice or any other conduct considered as primitive were significant justifications for the project of the colonisers: "the West conquered the world, destroyed cultures and civilisations, committed genocides... yet, all of this was done to save human rights" (Hinkelammert, 2004: p. 2).

For Hinkelammert (2004), in addition to being the philosopher of liberalism and private property, Locke was the founder of the inversion of human rights: for him any society must be organised around a liberal state as foundational order, and any who attempts to oppose it is an enemy of the natural bourgeois development. This inversion of human rights can be summarised in the statement: “no property for the enemies of property”, which is deeply related to the French revolution motto: “no liberty for the enemies of liberty” (Hinkelammert, 2004: p. 19). These statements show the profound connections between the modernity project, the liberal legal system and the capitalist economy.

Thus, the very constitution of liberalism created a system that violently denies any alternative organisation by using discourses that essentialise the Other, or by applying exceptional legal devices for the restitution of the order. For that reason, I suggest that when the human rights instruments and discourses eliminated the right of resistance/revolution these were not contradicting Western ideals, but showing its very essence, in other words showing the modernity project and its universal and rationalist paradigms. Therefore, Douzinas’ suggestion of opposing a ‘right to Law’ led by communist axioms against liberal capitalism, indeed, reproduces the universal logic of modernity by portraying an absolute enemy that must be eradicated and replaced by another totality.

Indigenous politics is not committed to any totalitarian political project. The main aim of many indigenous agendas could be defined as ‘the right to have communal rights’, a concept different from Arendt view, as well as from Rancière and Douzinas radical politics. This right does not refer merely to the possibility of being member of a national or international community. It does not express a pre-political condition or the necessity to enact a revolutionary project from a totalitarian communist agenda. This is a right geared to enact the principle of self-determination to govern indigenous vital spaces in material, ontological and epistemological terms.

The ‘right to have communal rights’ is indeed a right to Law, a right to regulate a whole social and economic system, but not in a universal way but in a political space forged by respectful intercultural relations between alternative views of socio-political and economic organisation. Thus, this right overcomes the Western formula inclusion/exclusion by proclaiming self-determination beyond modernity’s epistemological and ontological paradigms.

To sum up, the very abstractedness of human rights is embedded in the logic of Western modernity, which is a reason why when indigenous peoples engage in intercultural dialogues and negotiations without questioning this premise, they remain trapped in the inclusion/exclusion paradox, achieving some degrees of self-determination but a major assimilation through a limited and domesticated recognition of their traditional and cultural forms. To change this scenario a decolonial perspective proposes to extend the political by claiming a true interaction with a cosmology, legality and economy that have been obscured by different legal devices and discourses from the colonial era until today. In this way, liberal legality becomes a device for mediation between indigenous peoples and the state, a way to express indigeneity towards the enactment of self-determination. Thus, indigenous peoples use liberal legality and go beyond it.

3.5. Conclusion

The relationships between liberal legality and indigenous territorial rights have been marked by processes of inclusion/exclusion. In the colonial era mechanisms of elimination and negation of legal subjectivity and territories (discovery, just war, *terra nullius*) were implemented; in the early post-colonial era, most policies and legislation were directed to assimilate indigenous peoples (implementation of treaty making, private property rights, national policies of economic and social integration); in the current multicultural era, in spite of the globalisation of indigenous rights and activism, there are still mechanisms that bypass indigenous territorial rights through legal and political processes that I call friendly assimilation.

This situation is perpetuated because multicultural liberalism does not question the boundaries of the political. Multicultural liberalism discusses the terms in which indigenous peoples might be accommodated within the liberal framework. It provides them cultural recognition and some redistributive measures through minority rights or cultural rights without questioning its own epistemological and ontological hierarchy on alternatives systems, nor its relation to a capitalist political economy that expands violently over indigenous territories. Indigenous self-determination proposes that the intercultural dialogue must be directed not to define the terms in which indigenous peoples must be accommodated within liberal multicultural legality, but to define a new space for *the political* in which liberal legality has to reshape the way it relates to indigenous peoples and the political economy.

The previous arguments and the experience of indigenous peoples in Latin America and elsewhere during the multicultural era, shows that in spite of the positive results that indigenous peoples have achieved with liberal legality, this strategy also has acute limitations. The international legal system is left to one side by powerful governments when Court decisions rule against them. International binding standards emphasise consultation and participation of indigenous peoples instead of their consent and self-determination, and the global institutional framework and political economy, and national legal systems, still strongly promotes extractive activities within indigenous vital spaces.

In that context, the radical critiques on human rights and liberal legality correctly point out how the abstractness of liberal rights allows its appropriation by those in power and how it is related to the political economy. These critiques propose that those excluded from the political community can politicise rights and dispute its 'right to have rights' within the system, or to enact a 'right to Law' to overcome the whole unjust social structure. A decolonial perspective on human rights has a different orientation because it is neither about overcoming the whole order by another totality nor to dispute the way in which indigenous peoples must be included, but to propose a 'right to have communal rights' as an agenda for self-determination in legal, political and economic terms, but also from a different epistemological and ontological perspective. For this project, liberal legality is a medium to negotiate with the state the extension of territorial rights and self-determination.

Chapter 4: Negotiating alternatives to capitalism and development: *Buen vivir* and the possibilities of institutional transformation

4.1. Introduction

In the previous chapter I analysed the processes of inclusion/exclusion deployed by liberal legality and how today - in its multicultural form – it still is embedded in coloniality. In this chapter I focus on today's capitalism in the form of 'economic development' and how its discourses and practices generate tensions and contradictions with the indigenous political and economic organisation, and the way in which indigenous peoples are advancing an agenda of *Buen vivir* as an alternative to development.

In the first part I focus on the theories of development as rooted in capitalism and private property. I analyse critically modernisation theory, dependency theory and alternative development as different versions of liberal capitalism (market capitalism, state capitalism and welfare capitalism). Then, I analyse the property rights school as the foundation of the new wave of modernisation applied since the nineties in 'developing countries', and how this tendency threatens indigenous peoples' territorial rights.

In the second part I focus on the post-development approach and its connections to the indigenous perspective of *Buen vivir*. Then, I explore the de-growth approach as an important but limited critique to the current political economy. In addition, I analyse the experiences of Ecuador and Bolivia in implementing the *Buen vivir*, and their limitations and constraints in a context of extractivist dependence. Finally, I develop the notion of post-extractivism and study the innovative potential of *Buen vivir* if its implementation takes into account all its dimensions.

In the third part I explore the meanings of *interculturalidad* and develop its limitations and potential to undertake institutional changes related to indigenous peoples self-determination and territorial rights. In addition, I explore the differences and connections between *interculturalidad*, mediation and intercultural translation and the way in which indigenous peoples use these concepts and devices in their politics for self-determination.

4.2. Private property and developmental strategies for indigenous peoples

The recent encounters between indigenous peoples and the capitalist economy have been deployed in a context in which the word ‘development’ became crucial. For that reason, it is important to explore the theoretical and practical meanings of development and its contradictions and tensions with the indigenous economic and political organisation.

4.2.1. Modernisation and dependency theory: from market capitalism to state capitalism

Even though the classical theories of development have different approaches regarding political economy, they share the same modernising perspective by which indigenous peoples must be assimilated to major economic goals and the welfare of the ‘whole nation’.

The classic theories of development, modernisation and dependency theory, emerged in the fifties, in the era in which economic aid from the West to the former colonies became a common international policy. It was a period influenced by Keynesian economics and its strategies for avoiding economic crisis through mechanisms that might assure long-term economic growth, such as the promotion of private and public expenditure in consumption and investment (Martinez-Alier, 2009). Modernisation and dependency are conceived as macro and structural approaches to development that seek to modernise the whole economy of poor countries through a deterministic and evolutionary economic growth process led either by the market or the state (Long and Ploeg, 1994).

The basic argument of modernisation theory is that the initial preconditions for economic development (the so-called ‘take-off’) emerged in Western Europe thanks to the evolution of modern science and technological innovation, which was possible because of the discovery of new lands (Rostow, 1959). The extension of the market allowed an increase in trade, but also a major specialisation of production and the development of the financial system. The take-off thus expresses the social, political, and cultural triumph of those who modernised their economy over those who remained attached to their traditional society.

Modernisation theory then portrays a natural evolution in all the societies that starts with traditional societies and ends up with societies engaged with the era of high mass consumption (Rostow, 1959). The developing countries would be ‘traditional societies’, whereas the ‘developed countries’ have successfully passed these stages. Free markets, financialisation, private property would be necessary elements to follow the path of economic development.

The proponents of dependency theory were very distrustful of this scheme. They argued that in a global market of commodities, capital, and labour force, the relations generated are unequal because the development of some areas in the world occurs at the expense of other areas (Dos Santos, 1970). Thus, the sole promotion of foreign investments increases economic activity in the short term; but in the longer term, it restricts the economic growth and increases inequality (Soysa and Oneal, 1999; Kaufman et al,

1975). Raul Prebisch (1961, 1986), one of the main proponents of Latin American structuralism, proposed some ideas deeply related to dependency theory. He argued that the unequal terms of international trade affect those countries that export raw materials. Raw material industries are unlikely to stimulate growth in the whole economy because foreign direct investments dominate resource extraction and repatriate their profits instead of investing them locally, producing few linkages to other sectors. This enlarges the gap between rich industrialised states and poor resource exporting states (Ross, 1999; Chirot and Hall, 1982). In that context, the basic aim of this theory was to promote what the more advanced countries have already done: industrialisation. Therefore, dependency theory does not deny the dichotomy 'developed' and 'underdeveloped' countries; its fundamental point is that instead of simply opening the market to foreign investments, the state has a leading role in industrialising the economy.

These ideas became the mainstream in the United Nations Economic Commission for Latin America (ECLA) in the sixties, which promoted policies of import substitution industrialisation. In subsequent years, there emerged a new wave of scholars who focused on the internal reproduction of the external forces of capital (Cardoso, 1977). There are important differences between the old *dependentistas* and the new *dependentistas*. Unlike the former group, the latter rejected the dualism internal/external and replaced it with an analysis of the engagement of Latin American elites in the so-called neo-imperialist system (Frank, 1996). In this scenario, the industrialisation to produce goods for internal markets and the cheap labour costs benefited global corporations and their national elite partners because the dependency was not industrial, but technological: instead of importing consumer goods, the state had to import new technologies such as machinery, patents, etc. which increased external debts (Grosfoguel, 2000). Thus, the unstable economic growth of dependent countries and the eventual de-acceleration of the economy in core countries do not mean necessarily the overcoming of dependency, it will remain through political and economic relations and alliances maintained by the economic model (Faletto and Cardoso, 1977).

In the sixties, the new version of dependency theory was successful in academia, being adapted in the United States as World System Theory (Petras, 1981); and the old version was successful in practice through import substitution policies in order to make foreign goods less competitive with local manufacturing, and nationalisation of strategic industries to promote economic linkages across the economy (Ross, 1999). However, it produced high prices, the saturation of the markets for consumer and industrial goods, and economic instability (Hein, 1992). Thus, the policy implementation of dependency theory was subject of two main critiques: it focused too much on external factors, ignoring national structures of power which perpetuate inefficient import substitution policies (Amsden, 2003; Haggard, 1989) and it focused too much on the past without sufficiently understanding the present, ignoring fiscal management and macroeconomic stability (Ahiakpor, 1985). These critiques were supported by the successful examples of the 'Asian tigers' which supposedly applied open market policies. Thus, the economic mainstream proposes a dichotomy between inward-oriented/statist regimes and outward-oriented/liberal regimes.

It is important to note, however, that this dichotomy has been facilitated by the U.S. policies of economic support to countries that competed with socialist regimes (Taiwan against China; South Korea against North Korea; Puerto Rico against Cuba; Costa Rica

against Nicaragua, etc.). This strategy was directed to construct an ideological image of successful neoliberal policies by exaggerating the flaws of dependency theory. The outcome has been the re-establishment of modernisation policies and the denial of the very existence of dependency (Grosfoguel, 2000).

In spite of these efforts to negate the necessity of implementing any industrial policy, Schrank and Kurtz (2005) argue that today's 'developing countries' are forced to choose not between openness and closure but between neutrality and non-neutrality: import substitution (which is easy to establish but difficult to abandon) is being replaced by export promotion (which is difficult to establish and easy to abandon) (Schrank and Kurtz, 2005). Indeed, Asian countries used some protectionist policies in order to support the development of their infant industries, balancing the protection of domestic manufacturing with export incentives (Hein, 1992). Moreover, the most industrialised 'developing countries' such as India, China, Korea, Thailand, and Brazil, implemented state subsidies to help strategic sectors to transform its mid-tech industry into new industries of electronics, software, etc. (Amsden, 2003).

The new discussions regarding dependency and industrialisation, however, lack an analysis of the limits of the processes of production and extraction of nature (Larrea, 2010). The basic discordance between modernisation and dependency theory is not the nature or benefits of capitalism and economic growth, but the form in which it must be implemented: by the market or by the state. In both cases there is no questioning of the extractive political economy, and since this political economy still promotes displacement and dispossession of indigenous peoples, in practical terms both theories end up proposing a sort of economic assimilation of indigenous territorial rights.

4.2.2. The limitations of alternative development

The different approaches under the label of 'alternative development' have introduced cultural and social factors to the analysis of development, which imply the recognition of indigenous views and rights in the processes of development. However, this recognition of rights and the implementation of new development strategies do not challenge the Western conceptual framework and the political economy that affects territorial rights.

There is an important difference between today's development theory and concrete development policies. Most development policies are still based on modernisation theory and the emphasis on economic growth is dominant in the international arena (Blaikie, 2000) and in national policies (Deneulin and Dinerstein, 2010). Development theory, in contrast, is led by different approaches, some of which are regrouped under the label 'alternative development', such as human development, sustainable development, participatory development and so forth. These approaches are very critical of growth-based development, but they do not criticise its structural conditions and fundamentals (Esteva and Suri, 1998), and in this way they legitimise the material basis in which the modernising perspective of development is deployed (Cornwall and Brock, 2005).

According to Cornwall and Brock (2005) the language of alternative development emphasises words such as sustainability, participation, empowerment and so forth, but these words are not connected to important challenges of structural injustices, and

indeed they neglect important ideals such as solidarity or social justice. For example, sustainable development involves making complex decisions about investment, consumption and sustainability, in such a way as to not compromise the wellbeing of future generations (Loomis, 2000). Economic growth is not criticised in itself, but only the negative effects that it might generate if there are not restrictions and limitations in production mechanisms and emissions. However, Larrea (2010) perceptively argues that capitalism and sustainability are contradictory terms: it is impossible for a capitalistic society to be sustainable because it would contradict the basis of the model of capitalist accumulation in which nature is a resource to be exploited.

A similar problem emerges with the human development and the capability approach, a perspective developed by Amartya Sen and today prevalent in the academy and the United Nations. This approach is different from the classical theories of development because it is a micro approach (Long and Ploeg, 1994), it is not concerned with the nation-state as a whole but with the freedom of individual people. From this perspective development is a process of expanding the real freedoms that people enjoy: the social arrangements should aim to expand peoples' capabilities (Sen, 2000).

Three notions are fundamental for this approach: functionings, capability and agency. The term 'functionings' refers to valuable activities and states that provide the foundation for well-being (being healthy, safe, educated, etc.); these are things that people value and 'have reason to value'. The statement 'reason to value' means that given the disagreements regarding the social good, the society needs to make some social choices by public discussions (Alkire and Deneulin, 2009) through liberal democratic mechanisms. The term 'capability' refers to a set of functionings, reflecting the person's freedom to live one style of life or another. Thus, it takes the normative principle of ethical individualism, the view that what ultimately matters is what happens to every single individual in a society. In that context, the term 'agency' refers to a person's ability to pursue and realise goals that he or she values and has reason to value. Agency is a democratic value and entails that development processes should foster participation, public debate and democratic practice (Deneulin and Shahani, 2009). It is important to mention that Robeyns (2009) argues that this approach is an evaluative framework, so it is not concerned with addressing the underlying causes of injustices but evaluating the wellbeing of each person.⁴

For this approach although economic growth should not be the only concern of development, it is still very important as a means to expand the freedoms enjoyed by individuals. Therefore, freedoms depend also on material determinants, such as social and economic arrangements (for example, infrastructure for education and health care) as well as political and civil rights. It is clear that rather than radically criticising economic growth, Sen simply emphasises that growth is a means not an end. The exploitation and dispossession inherent in capitalist logic is not deeply analysed. In fact, the extension of capabilities is made on the basis of the development of what exists and is hegemonic: liberal democracy and economic growth. These concepts and other regulatory devices establish in advance the possibilities and limitations of human development (Larrea, 2010).

⁴ Although recent interpretations of the capability approach address structural issues (Deneulin, 2014; Schlosberg and Carruthers, 2010); these perspectives are not prevalent in the academia.

The flaws of political liberalism are also embedded in this framework. There are no responses to the problems that emerge in societies in which different views of development are irreconcilable. The emphasis on public reasoning fails to pay attention to contexts in which the possibilities of negotiation and interactions are restricted by power inequalities and the prevalence of a system of thought. Indeed, this approach does not challenge the Eurocentric roots of Western modernity. The term development is not problematized, nor the colonial reasons for 'underdevelopment'. Poverty, democracy, freedom are seen from the epistemological perspective of the developers, based on Rawlsian or Habermesian concepts to explain the detriment and the ways to improve their wellbeing.

The usual response to these critiques is that the capability approach, as an evaluative model, is not concerned with these aspects (Robeyns, 2009). But, in reality, a neutral evaluative theoretical model does not exist; all theoretical models are intrinsically performative since they assume a certain way of understanding the world, and their arguments are deployed on that basis.

4.2.3. Private property and the new wave of 'Law and Development'

The relation between indigenous peoples and property rights has been profoundly misunderstood, which can be observed in the conception of 'communal tenancy' as a legal vacuum, the denial of territorial rights and the portrayal of indigenous peoples as potential proprietary entrepreneurs. This situation has been dramatic for indigenous peoples because the emphasis on property regimes in development discourses has entailed the denial of indigenous legality and values.

Although liberal legality and its basic category, private property, have accompanied the different approaches to development, they became the centre of development thinking with the 'Law and Development approach' (Trubek, 1972). This perspective derived from modernisation theory and its emphasis on the role of law in the development project (Hoekema, 2009), particularly in relation to the benefits of contract enforcement and property rights in ensuring legal stability to transnational investments. However, in the seventies, the paradigm was strongly criticised as a failure in practice and deeply ethnocentric in theory: with the triumph of dependency theory in Latin America, the Law and Development approach was forgotten. It did not mean that property was not an important element during this era. For instance, the promotion of national industry meant the reinforcement of the public property and property relations of local elites.

The Law and Development approach had a revival in the nineties with the ascendancy of neoliberal hegemony, stressing the supreme role of the market and a legal-friendly business environment in the development project (see Cooter, 1996). Thus, at the level of macro policies the revival of modernisation theory was supported by the law in facilitating transnational investments as the main recipe against poverty (Hoekema, 2009). At the level of micro policies the alternative development models reinforced in practice the hegemony of property relations by relying on 'new development solutions' such as micro finance and the property formalisation for poor people championed by Hernando de Soto (McKechnie, 2005). Indeed, there is no contradiction (but rather complementarity) between the ideas of agency, empowerment, freedom and De Soto's motto of formalising the private property of the poor as a recipe for escaping from poverty. The property rights approach is the basis of these ideas.

The property rights approach is an attempt to address optimisation problems in the use and exploitation of resources by asserting that the correct definition of property creates positive incentives (Furubotn and Pejovich, 1972). For Demsetz (1967), private property rights generate incentives to internalise negative externalities in contrast to common property regimes in which anyone can hold a right for resource exploitation. Thus, for example, since the cost generated by those who exploit the land cannot be internalised by them, each individual conduct would affect the whole group because each person would have incentives to overexploit the land (Alchian and Demsetz, 1973). Hence, the scarcity of resources would be a result of common property regimes (Smith, 1981), which produce the so-called 'tragedy of the commons' (Hardin, 1968).

Private ownership, in contrast, would promote the maximisation of the plot of each landowner, incentivising investments, collateral provisions for capital access, flexible terms of exchange, better information and the easy fulfilment of environmental standards (Demsetz, 1967; Libecap, 2007). In order to portray this theoretical model as universal, Demsetz (2002) argues that the Native American communities changed naturally their communal property regime toward a private one. This change would have been based on the economic interests of Indians in engaging in the fur trade with Europeans, and the necessity of overcoming the losses generated by overhunting in the context of communal ownership. This fact would explain that the overcoming of communal property by private property is an issue of evolution and development (Alchian and Demsetz, 1973; Demsetz, 2002).

This story has been strongly criticised by Swaney (1990), who argues that the European expansion of trade in America indeed generated overexploitation and affected the indigenous way of life. The conversion of private property in most cases was neither natural nor voluntary but violent as the history of colonisation shows. Moreover, the indigenous legal regime did not allow overexploitation, but provided a set of social norms for the sustainable management of their common goods.

The failure of this and other Eurocentric theories respond to the essentialisation of indigenous social and economic organisation. By reproducing old ideas of indigenous backwardness and lawlessness, they assert that communal management is equivalent to open access and that the common resources are administrated better by private regimes. Both ideas have been criticised by Ostrom (2010). Regarding the first idea, Ostrom explains that in open access systems it is not possible to exclude others from resource use and exploitation (this is the case of open seas, atmosphere, etc.), whereas in common property regimes the members of a community have a legal right to exclude non-members from using a resource because there is a whole system of rights and duties recognised and enforced by social norms and institutions (Schlager and Ostrom, 1992; Swaney, 1990; Fitzpatrick, 2006). Regarding the second idea, she points out how common resources (water, land, etc.) might be administrated by private, public, cooperative or communal regimes, and owned by local, regional or national government, the communities or private companies, or be used as open access. In all the cases, there are current and historical successful and unsuccessful examples of resource management (Schlager and Ostrom, 1992).

As I explain in chapter 7, instead of property, many indigenous peoples vindicate the concept of territory. The legal notion of property usually is a means to achieve territorial

protection. Indeed, inside their territories what appears is a communal system of land and resources tenure, which involve a set of individual and collective rights and obligations. What is important to highlight now is how a theory of property that naturalises the liberal framework cannot understand indigenous communal organisation. In economic and political theory the fact that Europeans imposed systems of property on the colonies, and that indigenous peoples were already there, living with their own tenure systems, is often obscured. In that context, theorising ‘indigenous property’ from Kant, Locke or other Western thinkers might result in a misunderstanding of indigenous legality and political economy, which is independent from Western thinking (Tully, 1994). In fact, the use of ‘property’ did not mean that indigenous peoples engage with Western views but that this liberal device was appropriated as a means for territorial defence (see 6.4.1).

4.2.4. De Soto’s popular capitalism and the revival of assimilation and modernisation theories

The property rights school has heavily influenced the ‘popular capitalism’ of Hernando de Soto (Kerekes and Williamson, 2010), developed in his books *The Other Path* (1989) and the *Mystery of Capital* (2000). The main argument in these books is that the cause of poverty is not the lack of resources and assets of the poor, or the unjust distribution of wealth, but the lack of formal ownership of poor peoples’ resources and the difficulty of access to formalisation and credit. One of the main strategies against poverty is then titling because it would promote access to credit. De Soto’s arguments, however, have been subjected to much theoretical and practical questioning.

Theoretically, there is a tendency by De Soto to over-simplify the reality, for instance, by seeing the poor as potential entrepreneurs with a potential capital to invest if they are formalised. However, he does not take into account how profound inequalities among social groups affect the way in which they can benefit from formalisation (Sjaastad and Cousins, 2008). In addition, due to economic instability many poor people do not wish to access credit and become entrepreneurs; and many banks simply do not provide credit to poor people (Gilbert, 2002). He also is criticised for not undertaking a serious study of the historical formation of property rights and how it has been differently constructed in diverse social and political contexts (Manders, 2004). In that sense, many scholars remind him that the project of land formalisation re-enacts colonial and post-colonial policies of assimilation and modernisation (Sjaastad and Cousins, 2008; Michiel, 2009).

In practical terms, many case studies reject De Soto’s arguments. For instance, some studies in Africa and Central America show that land markets in poor urban areas might exist in spite of non-legal formalisation. Other studies in South America and Africa conclude that there is no relation between formalisation and access to credit, economic growth and welfare (Gilbert, 2002; Platteau, 1996; Sjaastad and Cousins, 2008; Bromley, 2008; Michiel, 2009). However, the success of De Soto’s theory on public policies is explained because it proclaims social justice but at the same time it strongly relies on the fundamentals of neoliberalism, modernisation and economic growth (Michiel, 2009).

In his last study, De Soto (2010) re-produces the same arguments regarding the urban poor to address indigenous peoples. De Soto sees the process of globalisation as

unavoidable for indigenous peoples, so they have to be integrated into it and the state must help this process by providing property titles to indigenous land. As a consequence of formalisation, indigenous peoples would gain access to credit and it would create a land market within indigenous territories.

With similar arguments Ghersi (2010) and Garrido (2010) assert that social conflicts which involve indigenous peoples could be reduced if the state recognises indigenous peoples' private property in the areas in which they live, including the subsoil resources. These new ownerships would allow indigenous peoples to sell their resources to those who can manage them more efficiently, and at the same time, indigenous peoples would obtain economic benefits from these transactions. These arguments are not new. As I have explained in the previous chapters, economic policies and contractual and property regimes have been used to assimilate and dispossess indigenous peoples. Indeed, there is nothing wrong in entitling indigenous peoples to rights to the resources located within their territories, but the problem is to implement these policies according to Western standards with the aim to facilitate extractive activities disregarding indigenous self-determination.

In addition, there are studies which demonstrate the Western bias of these perspectives. Hvalkof's study (2008) of Peru, Mexico, Honduras and Bolivia shows that when indigenous peoples implement titling processes they use these legal devices as a complement to their own institutional arrangements, not in order to replace them. These institutional arrangements ensure access to land and resources to each member, provide social recognition to its members and in general foster social cohesion. Regarding access to credit, Hvalkof (2008) found that even though indigenous peoples would like to invest in improving their harvest, they prefer not to risk their land with collateral.

Therefore, it is important to be very cautious when De Soto and others proclaim that the only way to obtain development is by transforming the communal tenure system into private property. As territorial rights are embedded in indigenous identities, what these scholars are really proposing is that the only way for indigenous peoples to participate in the economy is to deny their indigeneity (Hvalkof, 2008). In this way, private property regimes and extractivism converge in the processes of dispossession of identities.

De Soto's proposals thus express the assimilation perspective on indigenous rights and the modernising view on development. But more profoundly, his thesis is embedded in the logic of coloniality. In the past, the doctrine of *terra nullius* was an important legal device for coloniser expansion; today the assertion of private property's supremacy allows the capitalist expansion by implicitly proposing a doctrine of *lex nullius* (Mattei and Nader, 2008), which assumes that an indigenous legality does not exist regarding common goods, or that this system is primitive and inefficient, so in any case, it must be overcome by a proprietary regime.

4.3 Alternatives to development: from post-development to *Buen vivir*

The indigenous principle of *Buen vivir* (Good life) is emerging in Latin America as an alternative paradigm to development. It constitutes a political platform that seeks to negotiate the possibilities of the materialisation of a legality and political economy different from liberal capitalism. However, as this new paradigm entails a profound transformation of state structures, its implementation is problematic because the global political economy is based on a universal ideology and extractivist economy rooted in coloniality.

4.3.1. Post-development and *Buen vivir*

The modernisation approach of development in its old and new versions, as well as the different approaches that encompass the label of alternative development have been strongly criticised by post-development theory in the nineties. By rejecting the construction of ‘under-developed’ this movement rejects the whole category of development and proposes an alternative to ‘alternative development’ (Escobar, 1992; Esteva and Suri, 1998). Thus, it questions the foundational paradigm of progress, its pretension of universality, and the way in which colonialism was ignored in the analysis of the richness of the developers and the poverty of the underdeveloped (Charlton, 1997; Shanin, 2007). According to post-development scholars, the development project is a strategic discourse that was directed to re-structure the world order after the Second World War, subordinating peripheral countries to the necessities of the global political economy, such as access to natural resources and cheap labour (Charlton, 1997).

Although post-development scholars agree with dependency theory on the necessity to overcome international dependency, their unit of analysis is not the state but the new social movements, including indigenous peoples, from a postmodern theoretical perspective (Blaikie, 2000; Nederveen, 1998; Escobar, 1992; Robins, 2003).

The critics on the post-development perspective highlight how it promotes an idealisation of local communities, becoming in this way functional to neoliberalism (Kapoor, 2004). It is also criticised for denying the standardisation of living conditions, promoting a “Pontius Pilate politics” where the “rich wash their hands” or ignore the problems of the poor (Jakimow, 2008: p. 313). In addition, it is blamed for justifying the oppression inside groups of individuals by celebrating cultural relativism (Ziai, 2004), and occupying the place of the oppressed to speak for them without allowing them to express their concerns (Kapoor, 2004). Finally, Neverdeen (1998) argues that post-development scholars do not present concrete proposals but only theoretical critiques.

Some argue that the post-development contribution to development theory has been the deconstruction of development and the creation of a space for constructing alternatives to development (Friedman, 2006). Others argue that they indeed presented proposals related to direct democracy, the protection of traditional knowledge, and communal solidarity, among others (Ziai, 2004; Santos and Rodriguez, 2005). However, in spite of its unarticulated proposals, this approach has been unable to offer an agenda for going beyond development.

In that context, in Latin America an indigenous perspective is emerging that could be understood as a real alternative to development. It is called *Buen vivir* (Good life), a concept elaborated from Andean cosmologies of indigenous peoples of Bolivia and Peru. *Buen vivir* is the Spanish translation of the Quechua concept *Sumac kawsay* and the Aymara concept *Suma qamaña*. This concept is a fundamental principle of many indigenous cosmologies and expresses a particular way to know (epistemology) and be (ontology) in the world. It projects the indigenous ancestral social organisation based on the idea of relationality among human beings and nature (instead of individuality), in a context of solidarity, communal economy and communal social organisation.

Buen vivir is starting to be expressed through modern mechanisms such as constitutions, legislation and policies, but this does not mean that it can be absorbed by liberal frameworks or that it becomes a hybrid concept. On the contrary, *Buen vivir* reinforces indigenous identities and the possibilities to express indigeneity in the current institutionality and socio-political context.

In theoretical terms, *Buen vivir* founds an alternative project to Western modernity (Gudynas, 2011) and its particular ontology based on the myth of progress as a unidirectional linear path. The platform of *Buen vivir* critically assesses these assumptions (Blaser, 2010), presenting a radical critique of the cultural base of development, its legitimating discourses, its applications and institutional frameworks. Such radical challenges are possible within indigenous traditions because they culturally lack the conception of lineal process of development and progress (Gudynas, 2011; Acosta, 2011; Esteva, 2009), constituting a political subversion of the coloniality of power (Quijano, 2010). However, it is important to mention that *Buen vivir* is not a description of past or present indigenous practices, it is a space for political articulations among indigenous peoples and as such, it constitutes a powerful theoretical tool to construct and forge the aspirations of indigenous peoples for a better future.

Although most of the early formulations of the *Buen vivir* were produced independently of post-development, these perspectives share many similarities since both projects are radically critical of modernity and development. However, if *Buen vivir* entails the recognition of epistemologies and ontologies that have been obscured by the West, they seem better grasped by thinking derived from decolonial struggles rather than Foucaultian, Derridian or Deleuzian post-structuralism advanced by post-development theorists. The indigenous epistemologies and ontologies must be understood in another way, taking into account their context of knowledge production and the way they generate validity and certainty. *Buen vivir* expresses, thus, ontological conflicts (Gudynas, 2011) and epistemological conflicts, in pursuing its recognition as valid and respectful alternatives, which can be inspiring and be assumed by non-indigenous peoples in order to transform Western cosmologies (Gudynas, 2011).

For that reason, it is important to be alert to the tendency to 'modernise' *Buen vivir*, by transforming it in an acceptable form through its assimilation by conventional visions (Walsh, 2010; Gudynas, 2011). For example, unlike *Buen vivir*, the human development approach focuses more on 'living' and 'growing well' as individual than 'live together well' (*convivir bien*) in humanity and harmony with nature, which only can be achieved through a structural change in the whole system of coexistence (Albó, 2011). These issues are not discussed by most human development scholars and are not observed in policies inspired in human development. Similarly, it is not possible to celebrate *Buen*

vivir and at the same time, combine it with neo-developmentalism or neo-extractivism (Santos, 2010).

In the same way, I suggest that there is a danger of ‘post-modernising’ *Buen vivir* if it is appropriated by progressive scholars solely to portray their political agendas from postmodern perspectives, without engaging seriously with the indigenous epistemology, ontology and social organisation.

4.3.2. *Buen vivir* and degrowth

‘De-growth’ is an economic approach to development that could be understood as a practical implementation of post-development because it would imply a radical critique of the current development model. However, it cannot integrate the *Buen vivir* project because it does not propose a comprehensive critique of the dominant political economy.

De-growth was firstly proposed by Georgescu-Roegen (1971) in response to what he observed as irreversible damage inflicted by the policies of economic growth: when a society uses energy it is degraded or transformed into something new, but it cannot be transformed again into its original state. Thus, endless growth will end up with the exhaustion of world resources that support the existence of humanity. For Georgescu-Roegen, the dominant approaches to economics are too materialistic in proposing that the only economic interests of the human are consumption and production; but at the same time these approaches are not materialistic enough because they ignore the physical limitations of natural resources (Martinez-Alier, 2009).

Jeroen and Bergh (2011) propose several critiques of de-growth: First, it is a broad concept that has been developed through different meanings, such as consumption de-growth, work-time de-growth, GDP de-growth and so forth. Thus, it becomes an ambiguous concept which will create confusion rather than contribute to a debate about economic and environmental policies. Second, most de-growth scholars do not propose specific strategies that might guarantee an effective reduction of environmental degradation. Third, de-growth is unlikely to receive social and political support because countries depend on economic growth to support their social and political systems. In general, these scholars argue that the de-growth approach misunderstands the causality between growth and environmental policies. Instead of conceiving de-growth as the first and necessary step to reach environmental aims, they should propose reasonable environmental policies that may generate some degrees of de-growth.

In response, Kallis (2011) argues that the aim of de-growth is not just de-growing the economy but to do it in a socio-environmentally sustainable way. The goal is not necessarily to reduce GDP, it will be reduced as a result of the implementation of a sustainable de-growth. Thus, for Latouche (2009) the goal is ‘selective de-growth’ by initiating a political debate about which activities related to extraction, production and consumption need to be reduced and which ones need still to grow. Finally, Kallis (2011) argues that de-growth is different from sustainable development and its environmental policies because it promotes a qualitatively different political economy.

But de-growth cannot escape from the capitalist logic. This perspective believes that Keynesian regulation and social democracy could create a sustainable capitalism,

without interfering with the underlying logic of the economic system. However, de-growth and capitalism are contradictory terms (Foster, 2011). Capitalism not only establishes the conditions for growing, but also imposes it (Griethuysen, 2009). As argued by Griethuysen (2009), in the current world of contractual relations among citizens, companies and states, we all are debtors. And debtors who fail to meet the legal and economic constraints (solvency, profitability and time pressure) will be eliminated from the property-based economy (through the seizure, foreclosure or acquisition of their property). In this context, the proposals for de-growth are directly affected by the particular nature of the capitalist rationale, in which ecological concerns are assimilated to capitalism or are ignored. Indeed, environmental concerns might only be considered by economic agents insofar as they are compatible with the proprietary logic. For instance, corporate social responsibility, fair trade or the creation of a carbon market based on exclusive rights to emit, are mechanisms in which socio-ecological concerns are adapted to property's specific requirements, resulting in further growth, increasing environmental degradation and social inequality through the expansion of extractive activities.

Thus, Griethuysen (2009) argues that in order to avoid an eco-social disaster, a radical reorientation of the socio-economic structure is necessary. It means changing the hierarchy in which individual property is a priority and social and ecological considerations are subordinated to capitalist economic rationality. That is why for Foster (2011) de-growth is only useful if it is conceived as a specific measure within a more ambitious project to overcome capital accumulation and initiate a transition to a more sustainable and egalitarian world, in which the relations between nature and society are deployed in the interest of successive generations and the earth itself. In this project, those who are wealthier would have to consume less in order to reduce the pressure on the environment. The ecological struggle, thus, is directed not only to de-growth but specifically to de-accumulation.

The critiques of de-growth shows that it is not likely to generate important impacts because it can be easily assimilated or excluded from the current political economy. In addition, Latin American scholars are cautious of the a-critical transplant of the ideas of de-growth as the reduction of national economies (Gudynas, 2011; Houtart, 2011), because a certain growth in some sectors is necessary for new strategies under the *Buen vivir* (improving infrastructure in housing, health or education).

What is important to highlight regarding de-growth is that the main problem of this perspective, the global capitalist logic, is also an important barrier to the implementation of *Buen vivir* politics and policies, as I discuss in the next section.

4.3.3. *Buen vivir* in Bolivia and Ecuador

It is important to be precise that *Buen vivir* is a theoretical platform for political articulation instead of a descriptive category of specific indigenous ways of life. This is because each indigenous people have their own *Buen vivir* according to its own historical process (Blaser et al, 2010; Gudynas, 2011); nonetheless, *Buen vivir* expresses some non-Western principles of social organisation such as communality, holism and harmony with the environment shared by many indigenous peoples.

In this context, there is an intrinsic tension between the inherently expansive nature of capitalism, which creates economic dependence and environmental degradation, and the implementation of *Buen vivir*. That is why the current socio-economic and political transformations in Latin America suggest the existence of two projects in tension: (a) alternative modernisations, based on an anti-neo-liberal development model; (b) decolonial projects, based on communal and indigenous practices and knowledge. Both options which are called 'post-neoliberal' are taking place at the level of both states and social movements (Escobar, 2010) but in a conflictive way, expressing what Bolivian vice-president Garcia Linera (2007) calls the dis-encounter of two revolutionary reasons.

The most important examples of these tensions are the recent policies of *Buen vivir* implemented by the governments of Ecuador and Bolivia. In the new Ecuadorian Constitution *Buen vivir* is developed in the form of 'rights of *Buen vivir*', including many social rights (environment, water, education, housing, health, etc.) which have the same value as other sets of rights (collective indigenous rights, participation, rights of nature). It is the constitutional recognition of the rights of 'Mother Earth' (arts. 71, 72) also relevant. For Escobar (2010) it constitutes an epistemic-political event that disrupts the modern political space because this notion is unthinkable within any modern perspective in which nature is seen as an inert object to appropriate and exploit. On the other hand, the Constitution regulates a section named 'regime of *Buen vivir*' which focuses on the fostering of inclusion and equity, and the conservation of biodiversity and the management of natural resources. In addition the *Buen vivir* section is supported by the development regulation: development is not a value in itself, it must serve *Buen vivir* (Gudynas, 2011).

In Bolivia, *Buen vivir* is the ethical foundation of plurinationality, the recognition that the state is a unity constituted by multiple nations (Larrea, 2010). The constitution of 1994 had acknowledged the multi-ethnic and pluricultural character of Bolivian society, providing some political rights to indigenous groups. By this time, as part of the neoliberal multicultural reforms, a law that decentralised the state by redistributing economic resources from the nine departments of the country to hundreds of municipalities was enacted. Those areas with large numbers of indigenous people were granted the possibility of becoming indigenous municipal districts organised according to their customs, but still subject to a top-down state decision making (Galindo, 2010). The new Constitution of 2009 goes beyond the previous one by recognising the plurality of Bolivian society and by providing a plurinational character to legislative, judicial and electoral government branches. Thus, Bolivia has moved from a multicultural state that recognises social and political rights for indigenous peoples to participate within the unitary liberal state, toward a plurinational state that stresses the character of nations of indigenous peoples (Galindo, 2010).

In spite of the similarities, there are important differences between both constitutional texts. In Ecuador *Buen vivir* has two levels: framework for a set of rights, and mechanisms of implementation of those rights. In the Bolivian Constitution this connection between *Buen vivir* and the rights is not explicit (there is no reference to this concept in the section on fundamental rights), and there is no explicit recognition of the rights of nature. Nonetheless, in the Bolivian Constitution the notion of plurinationality is strongly developed (Gudynas, 2011). In spite of the well-known improvements of the new regulations regarding the rights of indigenous peoples, the two constitutions maintain dark sides related to the ownership of natural resources, the possibility to exploit indigenous land on behalf of national interests and the lack of recognition of prior and informed *consent* of indigenous peoples.

In the case of Bolivia, the new state design has not focused on political economy. In spite of the repetitive assertion in the new Constitution of the necessity of industrialisation to break the dependence on extraction (art. 316, 319) and the autonomy of indigenous peoples (art. 1, 2, 289, 290), the state dominates all natural resources of the country (art. 298, 309, 316). In spite of the constant recognition of the right of 'consultation' (art. 11, 352, 403) there is no recognition of the right to provide 'consent'. In practice, the economic extractive model has not been challenged, so, there is a constant threat on indigenous peoples' territories. Similarly the Ecuadorian constitution establishes that the state dominates all natural resources (art. 317, 408) and it can even exploit exceptionally the protected areas (art. 407). There is no recognition of the right of consent.

For indigenous populations this legal framework is very problematic because they tend to see their territory as non negotiable by being conceived as the foundation of their unity and identity as people, so there is no reason why the state has a latent power over it. Furthermore, since indigenous peoples struggle for self-determination many of them see the right of consultation as an attempt of the government to justify a project already decided, not as a medium to express their view on the way of life they want to live.

At the level of policymaking there are also many inconsistencies. In the development plan of Ecuador there are contradictory conceptions (regarding the role of economic growth) and lack of clarity in the processes to implement the Plan. It maintains the macro-developmental principles and a strong individual orientation (based on human development), opposed to the collectivistic potential of *Buen vivir*. Similarly the development Plan of Bolivia (2006) is still rooted in conventional views of development (Radcliffe, 2012).

The maintenance of conventional views of development in policies and legislation is problematic because many indigenous peoples are not agreeing with these views and how these are conceived as synonymous of economic growth plus redistribution, or as the improvement of individual capabilities. Instead of seeing wealth as a lineal economic progress or human flourishing as the improvement of individual capabilities, for indigenous ontologies the focus should be on the reinforcement of their culture and tradition, the communal welfare and the conservation of nature.

Furthermore, there is a big distance between the official pronouncements and the practices (Escobar, 2011; Radcliffe, 2012). The problem with these experiences is that

the financing of all programs is still based on the conventional development model of appropriation of nature, maintaining the pattern of exportation of natural resources: the increase in social spending continues to depend on exporting minerals and hydrocarbons. In sum, *Buen vivir* and conventional development are in tension because they express different views about the political economy of extractivism (Gudynas, 2011).

In the case of Ecuador, despite the original potential and significance of the Yasuní-ITT initiative - a project directed to leave at least 850 million barrels of crude oil beneath vulnerable areas of the Amazon in order to protect biodiversity - the project today has been abandoned and oil exploration in the Amazon region is being increased: the Ecuadorian government has zoned 65% of the Amazon for oil activities (52,300 km²), overlapping the ancestral territories of ten indigenous groups (Finer et al., 2008). The activities are undertaken by Andes Petroleum, which is owned by the Chinese National Petroleum Corporation (CNPC) and Petrochemical Corporation (SINOPEC), on behalf of Petro Ecuador. Likewise, the Correa government has initiated the process of opening Ecuador's gold and copper reserves to exploitation. These plans have generated strong resistance from indigenous communities who fear that the expansion of mining will only worsen their livelihoods (Bebbington, 2009; Arsel, 2012; Finer et al., 2008).

In the last years, President Correa has changed his discourse considerably. In the past, he proclaimed a very strong environmentalist agenda and now he celebrates the benefits of oil and mining extraction, emphasising that the revenues generated can be used for social development (Bebbington, 2009). In that context, economic elites have incorporated indigenous movements into the formal political system without reducing their own power. To achieve this aim the strategy has been to use economic development funds to integrate the leaders of the Confederation of Indigenous Nationalities of Ecuador (CONAIE) into the formal political system; or to appoint indigenous leaders to governmental offices. With these mechanisms, indigenous peoples have been included into the formal political system and in this way their more radical demands have been limited (Bowen, 2011). And when the indigenous movement does not work within the formal institutions of democracy, they are strongly criticised and criminalised by the state (Bowen, 2011).

In Bolivia, in spite of the environmentalist rhetoric, there is a stress on extractivist activities, and at the same time, a flexibilisation of environmental norms is announced (Radcliffe, 2012). Indeed, under the Morales government, hydrocarbon operations have expanded in the Bolivian northern Amazon, producing tensions between indigenous peoples and the government. In addition, hydrocarbon concessions in Bolivia overlap with protected areas and indigenous territories, particularly in the departments of La Paz, Beni, and Cochabamba (Radcliffe, 2012). Similarly, in the Gran Chaco of Tarija, most of the Aguargüe National Park has been affected by contracts given to Petrobras and Petroandina that allow for exploration and drilling. The argument provided by the government in favour of these policies is that natural resources belong to the nation and are needed to finance social policies of poverty alleviation (Bebbington, 2009; Finer et al., 2008).

In general, it is true that the improvements related to the constitutional recognition of plurinationality and *Buen Vivir* in Bolivia and Ecuador have opened a space for the expression of indigenous concerns, facilitating policies and legislation for indigenous

peoples (Sieder, 2011). But it is necessary to acknowledge the limits of that space and its content. The institutionalisation of plurinationalism and *Buen vivir* in plans, policies and legislations have not challenged the current political economy because the new institutionality has been constructed within a sphere of action that does not go beyond the logic of extractivism.

As we can observe, the tensions between *Buen vivir* and post-neoliberal development in the context of Bolivia and Ecuador are examples of the deep political-economic conflicts between liberal capitalism and indigenous self-determination. The latter is limited by the former through internal and external forces. Internally, the national state depends economically on the extractive industry, foreign capital, and the dispossession of indigenous territories and livelihoods in order to obtain revenues from extractive industries to support social programs. Externally, the interconnected global market and a legal and political global framework that promotes business-friendly legislation and policies, perpetuate dependency on natural resources in third world economies, reinforcing the extractivist political economy.

4.3.4 *Buen vivir* and post-extractivism

The cases of Bolivia and Ecuador show that the project of *Buen vivir* is very difficult to achieve in a context of extractivism. Indeed, since extractivism is the economic engine of coloniality, it is embedded in all Latin American countries with different degrees and particularities.

Scholars identify a conservative or market extractivism in Colombia and Chile (some include Peru, see 8.3.2), where the private sector plays a determinant role in the political economy of extraction, and a neo-extractivism or progressive neo-extractivism of the so-called post-neoliberal governments (for example, Bolivia, Ecuador, Venezuela, Argentina and Brazil), countries that have nationalised their extractive industries or have reinforced their state extractive companies, and have nationalised or renegotiated the rents generated by foreign extractive companies, but at the same time have deepened the economic dependence on this sector (Gudynas, 2009; De Echave, 2011; Pajares et al, 2011; Azpur et al, 2011).

In the regimes that pursue progressive extractivism, rent distribution is important, but always located in the context of the continuity of the primary-exporter model (Azpur et al, 2011). Progressive governments have implemented programs against poverty which are broader and persistent, achieving good results in almost all cases, with important poverty reduction. But the problem is that in all cases extractive strategies have intensified (Gudynas, 2011), as well as social conflicts.

In general, for Gudynas (2011), the problems triggered by neo-extractivist models shows the weaknesses of the strategy of just taking one step (state presence in the economy) and waiting until this policy generates economic benefits and political conditions toward a second step. For him, it is necessary to address the two issues: market regulation and state recuperation on the one hand; social and environmental protection and economic reforms to diversify the productive chains, on the other hand.

These measures entail a transition from the so-called predator extractivism to a reasonable extractivism, and the transition would end with the final arrival of a

necessary extractivism. The predator extractivism is highly harmful because it entails the exploitation of huge geographic areas and high social and environmental impact generated by opencast mining, pollution from oil exploitation in fragile ecological areas, abuses of agrochemicals and so forth. In the reasonable extractivism, extractive industries would fulfil the social and environmental norms, using the best technology available to reduce environmental impacts and the state would properly monitor and enforce environmental norms. In addition, there would be an adequate taxation on earnings that would be invested in industrialisation projects. Finally, the necessary extractivism would entail that only really necessary extractive activities would remain, and insofar they fulfil strong social and environmental conditions. In addition, these activities would be directly connected to productive national and regional chains to feed consumption networks focused on life quality (Gudynas, 2011).

Thus, post-extractivist strategies do not promote the prohibition of all forms of extractivism, but the exploration of paths that allow resizing some sectors in order not to depend economically on them, and to maintain only those which are really necessary and under acceptable operation conditions. These measures cannot be implemented abruptly but through a transition. For Gudynas (2011) the transition or gradual change is a necessity because it needs a growing social basis for support and many social actors would resist the changes. In addition, nowadays there is no a complete idea of the boundaries of this project: it will be forged by stages of adjustments and learning. Finally, it is important to create articulations at regional and global levels. In fact, to implement post-extractivist policies it would be necessary to coordinate prices and social and environmental requirements among Latin American countries in order to avoid the possibility that extractive industries isolate the countries that firstly implement post-extractivist policies (Gudynas, 2011).

Post-extractivism addresses the political economic factor missing in the new political and institutional reforms of Bolivia and Ecuador. In fact, if *Buen vivir* is going to be implemented beyond rhetorical manipulation, it must necessarily address the political economy. In that context, it is possible to construct useful articulations between the project of *Buen vivir* and the post-extractivist agenda.

Indeed, *Buen vivir*'s practical proposals encompass different policy proposals connected to the idea of overcoming the extractivist dependency, such as the promotion of associative enterprises with adequate financing and technology for communitarian management (Féliz, 2011); the preservation and construction of exchange networks and non-merchandised distribution of food directed to the defence and promotion of popular and communitarian markets (Seoane and Taddei, 2010); the socialisation of the strategic means of production under the control of the people through participative management (since the changing of management of natural resources from corporations to the state is not enough because national enterprises often operate with the same capitalist logic) (Houtart, 2011); the extension of the reserves that protect biodiversity as well as the promotion of peasant organic agriculture (Houtart, 2011); the promotion of bio-knowledge, eco-tourism, communitarian services and agro-ecological products in order to create a popular and solidaristic economy as the main tool to incorporate the redistribution in the process of generating aggregate value (Ramírez, 2010), amongst others.

In that scenario, post-extractivism could be conceived as the technical and macro-economic element in the political agenda of *Buen vivir*. The problem is to implement this agenda within state and global structures profoundly embedded in the political economy of extraction and the colonality of knowledge and being. A key mechanism that might help to overcome this problem is the *interculturalidad*.

4.4. *Interculturalidad* and the possibilities of institutional transformation

The term *interculturalidad* emerged in the seventies in Bolivia, Peru and Ecuador from the discussions around programs on bilingual education and the right of the people to learn in schools in their own language (Degregori and Sandoval, 2007; De la Cadena, 2005). Some years later the concept went beyond the public educational problematic towards the debate on cultural diversity in the society and the state (Degregori and Sandoval, 2007).

The concept of *interculturalidad* has different potential meanings. The most basic view is a ‘dialogue between cultures’ or a ‘communicational process’ that has been expanded in the last years thanks to immigration and the mass media (Garcia Canclini, 2013). This is, according to Albó and Galindo (2012), a negative notion of *interculturalidad* because the restrictive interest in the processes of communication might end up in a situation in which the dialogue is developed in an essentialist way by imposing one specific political and cosmological framework, and including or excluding those peoples portrayed as inferiors. This notion is indeed embedded in a hegemonic attempt of improving Indian knowledge and providing them with more market opportunities (De la Cadena, 2005).

A more radical and deep conception of *interculturalidad* goes beyond the notions of interrelation or communication (as usually understood in the European context) by emphasising how this process expresses a different way of thinking and living in relation and against colonality (Walsh, 2006; De la Cadena, 2005). This version of *interculturalidad* comes from indigenous peoples who use it to demand not only respectful relations vis-a-vis the state, but also the very transformation of the unitary state logic and structure (Walsh 2002 in De la Cadena, 2005). Thus, De la Cadena (2005) argues that it aims at constructing a new social relation against former social hierarchies: “it becomes a novel and deeply subversive state-making technology *and* an epistemological site for the production of a different kind of knowledge” (p. 24).

In that context, *interculturalidad* is different from pluri or multiculturalism, concepts that were born in the context of first world intellectuals, who recurrently use them. Indeed, the ‘pluri’ or ‘multi’ of these concepts only indicate the existence of many cultures in a specific setting, whereas the term *interculturalidad* includes an explicit reference to interactions among them, common relations and common learning; but these relations of constant learning and mutual enrichment do not end up either with the inclusion of one culture into the other or the fusion of cultures (Albó and Galindo, 2012). That is why this concept is deeply related to the notion of ‘plurinationalism’. While *interculturalidad* refers to the processes of interaction among indigenous peoples and the state in a way that public policies express both systems of being/knowledge and political economies; plurinationality refers to one possible the result of these

interactions: a new state structure that recognises indigenous peoples as nations. This new structure is, however, not static: *interculturalidad* in plurinational contexts would entail constant interactions among nations.

Thus, *interculturalidad* must be understood as a principle of social co-existence and as a political practice that leads to a policy construction. This principle can be inserted in the institutional design of multiculturalism (in most Latin American constitutions today) but also it could transcend these institutional arrangements towards new institutional designs, such as the plurinationality of Ecuador and Bolivia, the project of a Federal state that recognises indigenous nations (Tully, 1995) or something different, such as an 'intercultural state' where the interactions could lead to the reconstruction and recognition of some indigenous nations. In all the cases, *interculturalidad* demands a dialogue directed to the transformation of the state logic in all its dimensions (political, economic, epistemological and ontological).

Interculturalidad proposes thus a dialogue without indigenous acculturation. The Peruvian writer Jose Maria Arguedas proposed the epistemic platform to think in intercultural terms (Degregori and Sandoval, 2007; De la Cadena, 2005). He proposed to observe the Indian not in a dialectical relation to the master, but in a different cosmological dimension that nonetheless, shares the same economic materiality. The problem with Arguedas was that during his time (the fifties) there were no consolidated indigenous movements, in contrast, the political Left or Right portrayed the Indians as included or excluded from the state and the dominant society. Arguedas had to live in a context of "Indigenism without Indians" (Degregori and Sandoval, 2007: p. 40).

But today indigenism is not so much led by state policies or elite intellectuals but by indigenous themselves. It is not acceptable then to use *interculturalidad* in order to allow their views and concerns to be appropriated by liberal/neoliberal frameworks or socialist agendas. For example, when indigenous peoples vindicate their communal economy they are arguing something very different from the 'commodity' form of land and resources advanced by scholars such as De Soto. Similarly, this communal economy is connected to indigenous self-determination in a very different way from communist axioms. Nonetheless, each interaction with indigenous peoples have been marked by past and current assumptions that they are potential landowners or entrepreneurs in liberal terms, or that they share the idea of communism even during the Inca Empire (Mariategui, 1928) or today the so-called socialism of the *Buen vivir* (Santos, 2010).

The previous explanations show that the main challenges of *interculturalidad* are the cultural or cosmological distance, and the structural distance among cultures (Diez, 2009). The first distance only might be overcome with the cultural understanding of the Other. Therefore, behind this challenge there is a challenge of decolonising knowledge to overcome the Western pre-established theoretical frameworks. The structural distance lies in the material and power inequality (conditions of poverty, lack of expertise, political power and so forth) which increase the distance between interlocutors. That is why behind the intercultural challenge there is also a structural challenge, or the necessity to decolonise the economic and legal relations. The problem is that this structural challenge is not only a national issue but also it is embedded in a context of a global political economy of extraction.

Countries such as Bolivia and Ecuador have advanced in the struggle for overcoming the first challenge, but have remained trapped in the possibilities to overcome the structural conditions in which their *Buen vivir* projects are being implemented. *Interculturalidad* thus must be developed in a way that is able to overcome the extractive aspect of coloniality in its national and global levels.

In that context, the project of *interculturalidad* can be usefully connected to the project of intercultural translation of Santos (see 2.3.3). The intercultural translation has been conceived primarily as a strategy to develop social relations among social movements with different cultural and ideological backgrounds. The idea is that these social movements become global and in this way, they can propose challenges to the hegemonic globalisation. If one aspect of this hegemony is the global political economy of extraction, intercultural translation must allow the creation of global chains of solidarity and proposals to face the external power of extractivism. When intercultural translation is complemented with the concept of *interculturalidad* developed in Latin America, this notion becomes a tool for transforming the state and national social relations by being able to establish a platform for engaging in deep discussions amongst indigenous peoples and the state, and indigenous peoples and companies.

Indeed, even though self-determination is the main principle of indigenous peoples, the state is conceived as an inevitable way to achieve social justice, and companies are powerful allies of most state economic policies (see 8.3.3). Then, indigenous peoples must be ready to engage in discussions and negotiations with the state and companies without putting aside their own projects of *Buen vivir*. This means an exercise of ‘trans-modernity’ (see 2.3.3): the discussions must be directed not to negotiate the terms of inclusion of indigenous peoples, but to negotiate a new extension of the political in which self-determination and territorial concerns are put in place, in sum, the idea is a truthful negotiation between different rationalities regarding the alternatives to capitalism and development.

In this way, the processes of *interculturalidad* could be an opportunity to forge a platform for the *Buen vivir* agenda that could be engaged from actors within and outside the state. Outside the state many environmental NGOs and local communities are willing to engage with the indigenous agenda. Martinez-Alier (2009) calls this tendency the ‘environmentalism of the poor’ which emerges when poor people see that their livelihoods are threatened because of mining projects, dams, etc. They protest neither because they are professional environmentalists nor because necessarily they are indigenous, but because they need the environment for the maintenance of their everyday way of life. In many cases, they vindicate their local identity re-inventing indigenous rights and values such as the sacredness of the land. Thus, these local communities explicitly oppose the dispossession of land, forests, mineral resources and water by governments or corporations. Rival (2010) talks about the ‘environmentalism of the people’ by observing in her ethnographic study developed in Ecuador that people are forming a collective environmental consciousness not directly based on specific livelihood interests such as Martinez-Alier suggests, but demand to the state the fulfilment of its legal obligations of respect regarding the people and the place where they live. In any case, the ecological factor highlighted by the *Buen vivir* agenda becomes an important platform for many people who share a similar impetus regarding nature and extractive activities.

Actors within the state could also engage in the above-mentioned platform, transforming the politics of *Buen vivir* into policies of *Buen vivir*, namely, intercultural policies directed to change the hierarchy imposed by coloniality in legal and economic terms. Obviously this is not an easy task because coloniality of knowledge is deeply entrenched in policy-making and extractivism is profoundly embedded in the national and global political economy, however, this seems to be an important path to be followed for the recognition of territorial rights.

In chapters 6 and 7 I discuss the institutional changes generated in Peru as a consequence of socio-environmental conflicts and the new indigeneity. For now I only would like to highlight that *Buen vivir* and *interculturalidad* constitute important theoretical and practical tools toward the interculturalisation of the state and the possibilities to achieve a more just society.

4.5. Conclusion

The relations between the capitalist expansion and indigenous peoples' territorial rights have been marked by misunderstandings and assimilation. The classical theories on development, modernisation and dependency, do not question the extractivist political economy and do not take into account the differences between indigenous peoples priorities and national projects. The theories of alternative development do not question the structural conditions and the fundamentals of the political economy of extraction, omit to problematize the role of colonisation in current inequality and tend to conceptualise indigenous aspirations from Western frameworks. In that context, global and national policies still remain embedded in the logic of modernisation, such as the arguments that proclaim the supremacy of private property over indigenous communal regimes. In practice, these policies deny indigenous cultural and economic norms and indigeneity itself, re-producing the logic and domination of coloniality.

Post-development theory has proposed important critiques to the mainstream view of development from a post-modern perspective. However, it tends to focus only on local struggles without taking seriously the limitations presented by the global political economy and without proposing feasible national or global policies. Similar flaws are found in the de-growth perspective. *Buen vivir*, in contrast, is emerging as a different paradigm that re-conceptualises development from the theoretical perspective of indigenous peoples. The *Buen vivir* agenda emphasises the notions of communality in economic and social terms, self-determination and harmony with nature and other non-human beings. Even though each indigenous people has a specific version of *Buen vivir*, it is possible to conceive it as a political platform in which they and non-indigenous movements who struggle for solidarity and ecology could meet and generate a politics and policymaking from below.

Buen vivir is being implemented by constitutions, laws and policies in Bolivia and Ecuador, but even though they have produced very important institutional designs in favour of indigenous peoples (they have gained more degrees of autonomy and recognition of social rights), these post-neoliberal regimes reproduce situations of dispossession because the whole economy still relies on the political economy of extraction. In these and other so-called post-neoliberal countries, extractivism remains

embedded in national structures, but it also exists in global structures. This is the reason why it is so difficult to overcome.

In this context, post-extractivist strategies are emerging in Latin America at the level of policy-proposals. Post-extractivism proposes a transition from the current predator extractivism to a more reasonable extractivism, in which only the strictly necessary extractivist activities would remain. In this case, the state would have to diversify its economy towards more sustainable economic activities and at the same time promote social and economic rights. Therefore, post-extractivism strategies support the *Buen vivir* agenda.

Nonetheless, in order to undertake institutional changes based on the *Buen vivir* agenda, it would be necessary to develop a project of *interculturalidad*. This project is very different from multiculturalism because it is not about the inclusion and toleration of ethnic minorities to the national society, on the contrary, it recognises that there are different cultures with the same value and that constantly interact with one another in a respectful and enriching way. *Interculturalidad*, thus, is directed to overcome coloniality by openly proposing the indigenous agenda of *Buen vivir*, which entails self-determination and the necessary expansion of the political by negotiating alternatives to development and capitalism. In this context, the intercultural translation would have a global dimension in trying to propose global solutions to the global political economy of extraction, and *interculturalidad* would have a national dimension by trying to transform indigenous politics into intercultural policies, namely, by trying to transform the liberal state into an intercultural state.

Chapter 5: Research Methodology

5.1. Research epistemology

The epistemological approach of this research is based on the ‘decoloniality of knowledge’ explained in chapter 2 (section 2.3.2). Inspired by this theoretical framework, I engage with the literature on decolonial methodology (Smith, 1999; Rigney, 1999) and other radical methodological approaches such as anti-oppressive research (Potts and Brown, 2005) and activist research (Hale, 2008).

Smith (1999) argues that the process by which Western researchers objectify other subjects and entities has not been neutral because since colonialism they have used their own representational systems to name and know indigenous peoples. Thus, Western researchers have appropriated the knowledge produced by this process and diffused it with their self-proclaimed authority. Therefore, from this perspective the main concern regarding Western research is not only its positivist approach, but the fact that it promotes a cultural orientation, a set of values, a different conceptualisation of time, space and subjectivity that pretends to be objective and universal.

A decolonial methodology therefore seeks to revalorise indigenous epistemological perspectives by critically rethinking the usual methodologies and research methods, and their theoretical foundations (Smith, 1999). It does not mean a total rejection of all Western theoretical or methodological elaboration (Rigney, 1999). Indeed, it does agree with European critical theory about the importance of the relation between knowledge and power (Smith, 1999); however, the dialogue between critical approaches can only be articulated after a comprehensive understanding of both of them.

For instance, ‘reflexive methodologies’ and *Foucauldian* ‘archaeology of knowledge’ are very important in proposing critical perspectives on knowledge, but they do not fit exactly with decolonial epistemologies. Reflexivity proposes to invert the natural relation of the observer to his object of study in order to better understand the subject’s position in relation to the object (Bourdieu, 1989). The archaeology of knowledge shows how the meaning’s production of discourses is related to power structures (Foucault, 1989). Indigenous methodologies are certainly not in opposition with recognising the role of power in knowledge production, nor the necessity of self-reflection of the researcher, but the point of departure is different: It is not to deconstruct or reflect on Western knowledge and the position of the researcher, but to recognise that there are epistemologies located outside Western modernity and that it is possible to undertake research taking into account these different epistemologies.

Thus, the decolonisation of research entails the recognition that indigenous people engage in the analysis of their own social processes (Speed, 2008); they define the boundaries of their own epistemologies and ontologies, and are able to evaluate their own experience (Rigney, 1999). For that reason in this research I pay special attention to the way in which indigenous peoples conceive and articulate their political aspirations. I was not looking for ‘findings’ as if indigenous peoples were inactive objects of study. I generated knowledge from observing the social dynamics and interactions of indigenous peoples, the state and companies.

The literature on indigenous research has identified important research principles that I followed during my interactions with indigenous peoples. One principle is 'relational accountability', referring to the indigenous view of the interrelation between everything and everyone around them, and implies that all parts of the research process are related (Louis, 2007). Another principle is 'respectful representation', requiring the researcher to consider self-reflection but also "to display characteristics of humility, generosity, and patience with the process, and accepting decisions of the indigenous people in regard to the treatment of any knowledge shared" (Louis, 2007: p. 133). 'Reciprocal appropriation' is another relevant principle. This suggests that all interaction entails an exchange of values and that it cannot weaken indigenous culture, on the contrary, it must reinforce it and ensure benefits for both the researcher and the community (Louis, 2007). Finally, the principle of 'respect of indigenous regulation' means that the research must respect indigenous ethics and regulations, taking into account the indigenous agenda and the possible impact that the research can produce (Smith, 1999).

It is important to note that the decolonisation of research changes the focus from the researcher's personal aims to the community's projects, not only to provide a space for listening to indigenous voices, but also to construct a truth from the community through relations of trust, collaboration, and reciprocity (Prior, 2007). Decolonial methodologies thus are inherently connected to other radical methodological approaches such as 'anti-oppressive research' (Potts and Brown, 2005) or 'activist research' (Hale, 2008), which do not seek to discover knowledge, but to co-create and revalorise knowledge located in marginalised and oppressed areas (Potts and Brown, 2005).

Hence, indigenous research is a highly political activity since it involves making explicit the political dimension of the process of knowledge creation. To this end, it requires a real commitment to the participants' concerns and aspirations (Potts and Brown, 2005). This kind of research is often objected because of the supposed lack of objectivity and rigor (Hale, 2008; Smith, 1999). Although most responses to these critiques propose deconstructive arguments, the strategy against these objections must also be constructive (Hale, 2008).

Thus, Hale (2008) argues that it is not true that activist research would weaken academic rigor, and that on the contrary, this research is necessary precisely to obtain true rigor. In order to listen closely to people and comprehensively understand their position, it is important to create alliances and assume their concerns. Then, they are no longer informants or data sources, but active participants in the whole research process, from the delimitation of the research topic and its dimension to the evaluation of the results.

Regarding objectivity, Hale (2008) recommends taking into account the 'positioned objectivity' proposed by Donna Haraway (1988) and Weber's argument (1949) about objective social science as culturally and historically shaped by a provisional consensus rather than by universal standards of validity. In this way, we can understand that by providing a deeper understanding of the social reality of the communities, the activist scholarship can be presented as more objective than conventional methodological approaches (Hale, 2008). For example, Nabudere (2008) argues that if he had not valorised and strengthened the indigenous community he explored, important indigenous knowledge would have remained hidden or invisible. I could argue the same for this research. In order to really understand indigenous political aspirations and

concerns, I had to be fully immersed in their political agenda, otherwise, it would be impossible to talk with most of my indigenous interviewees.

In sum, decolonial, anti-oppressive and activist methodology expresses a politics, which the researcher must recognise and critically develop. It does not mean that this methodology contains 'political bias', on the contrary, it ensures a deeper reflection and methodological rigor because the point of view that assumes decolonial and activist researchers places them in an advantageous position to develop a profound understanding of the topic (Hale, 2008).

As I will explain in the following pages, my fieldwork involved an active participation with indigenous communities and organisations, and interviews with activists, state officials and companies' representatives. The decolonial methodology was very useful in understanding the dynamics inside indigenous structures, but this was not the case when I investigated governmental centres of policymaking. Thus, during my research activities with state offices and companies, I had to perform a more conventional methodological approach.

I myself was aware that during my fieldwork I had different identities: an identity as activist ethnographer during my trip to the Amazon; an identity as scholar-activist during my encounters with activists and indigenous organisations; and an identity as a professional policy researcher during my research with state officials and companies. These different or situated identities, however, do not contradict my epistemological perspective. Even though the methodological approach was applied in different ways according to each context, the epistemology was the same. The decolonial epistemology remained as a general epistemological framework because during all my encounters I was aware of the presence of coloniality in different settings, from state and companies' offices to indigenous communities.

It is important to mention that the situated identities helped me to reflect on the construction of my own identity as a *mestizo*. I am a Peruvian *mestizo* who grew up in Lima in a humble middle class family; my parents were poor migrants and my grandparents were villagers in the Andes with knowledge of Quechua. Coloniality is so intense in Peru that many migrants tried to renounce to their Quechua roots by renouncing speaking Quechua or hiding their culture or teaching their children not to be *provincianos* (villagers). Thus, issues such as the name (naming the children with Anglosaxon names such as 'Roger') or the parents' desire that their children marry whiter people to 'improve the race' are expressions of this process. These and others comments, desires and practices were present at home, in school and in the broader society during my childhood and remain active today in the whole logic of social organisation. Namely, coloniality is so powerful that it transcends indigenous communities, companies and state offices; it remains in every single space of the society, in every single Peruvian.

5.2. Research design: methodological approach, research methodology and methods

5.2.1. Methodological approach: participatory action research

My methodological approach has been participatory action research, applied within the framework of decolonial methodologies. Participatory research usually entails a high involvement with local people, but researchers decide how they observe and interpret the data (Greenwood, 2008). In my case, my action research with indigenous communities and organisations entailed a process of learning from indigenous concepts and aspirations.

Thus, the research with indigenous peoples and organisations provided me with a deep understanding of indigenous political dynamics that helped me to re-think preconceived ideas. For example, I learnt that indigenous politics in the Amazon differed more than I had thought: for some sectors within the movement, the political agenda entails a radical critique of liberal capitalism, but for others it implies an active negotiation with liberal capitalism. I learnt about the territorial agenda of indigenous organisations and that *Buen vivir* is becoming a discourse for political articulation.

My participation also entailed legal advice to indigenous peoples, the facilitation of alliances between them and NGOs, the diffusion of relevant information regarding current legal and political affairs of interest to them, the dissemination of their concerns and visions to state and companies offices, among other activities.

My participation was much more limited during my encounters with state officials. I did formal and informal interviews with state officials in charge of indigenous and environmental affairs, and national development. I provided them with suggestions on policymaking regarding indigenous rights and environmental regulation. In addition, I presented to them the views and concerns of indigenous peoples. I found that state officials differed in their perspectives more than I had anticipated, and that there were contradicting views and some spaces within the state for truly intercultural indigenous policies. However, I also found that coloniality is still very much embedded in state structures and the thinking of many policy-makers.

Specifically, my research methodology was based on qualitative methods, particularly the extended case study, participant observation, and semi-structured and unstructured interviews. Qualitative methods were crucial to address the complexities of indigenous politics and state policies because they made possible an exhaustive analysis of the issue and a profound understanding of its multiple dimensions. In addition, they made possible the identification of intangible factors, such as social and cultural norms (Mack et al, 2005). These methods were guided by the decolonial methodology previously explained. In fact, no qualitative method is inherently anti-oppressive and decolonial, what is decolonial is the epistemology that guides the application of the methods (Potts and Brown, 2005).

5.2.2 Extended Case study

This research has been developed through a case study: *the Baguazo and Awajun political mobilisations in the Peruvian Northern Amazon for defending their territorial rights against state policies and extractive industries*. The aim was to analyse the tensions between the politics of indigenous peoples and the policies implemented by the state regarding extractive activities and indigenous peoples' rights.

I paid particular attention to the *meaning* of the *Baguazo* (see sections 1.1 and 6.2) and its legal and political implications, reason why instead of focusing on the description of the event, I developed a comprehensive analysis by exploring the historical indigenous struggles against state attempts of territorial dispossession and the current conflicts with mining and oil companies which hold concessions provided by the state within the Awajun territory.

I also studied the state response to indigenous social mobilisation and the governmental attempts to implement intercultural policies. I focused on officials in charge of indigenous affairs, social conflicts, environmental issues and development. This multidimensional analysis has helped me to answer the three research questions that inform this thesis:

1. What are the tensions and the nature of the conflict between indigenous peoples' territorial rights and liberal capitalism (expressed in multiculturalism and economic development)?
2. In what ways can indigenous self-determination and territoriality articulate an alternative to liberal capitalism?
3. What would be the adequate epistemological framework to theorise indigenous politics and legality at present?

The case study method is important in this research because it allows analysis of specific information relating to a relevant case in order to find its connection to other similar cases and to deny dominant assumptions. As asserted by Flyvbjerg (2006), this method proposes a 'falsification test' by which if one case does not support a universal proposition, the scientific validity of this proposition must be denied. Thus, with the case study undertaken in this thesis the universal assumptions of Western modernity, liberal capitalism and globalisation regarding the assimilation of indigenous politics are critically assessed.

Specifically, I use the 'extended case method' because it emphasises the necessity of a multi-systemic analysis in order to observe the articulations of a specific case and to develop an existing theory (Burawoy, 1998; Miranda, 2009). The existing theory that I develop using this method is the decolonial approach. This has mainly been applied in cultural studies, political philosophy and ethics. I extend this framework to the connection between political theory, political ecology and critical legal theory.

The multi-systemic analysis is relevant for this research in order to understand how the specific case is deeply related to other similar cases (Burawoy, 1998). Thus, to understand fully the Awajun struggles in relation to state policies I analyse the

articulations, actual or potential, of the Awajun struggles with other similar cases that share a similar logic, actors and power relations.

Therefore, in order to observe these linkages and understand properly the problem I focused on 3 groups subdivided into 6 subgroups. Group 1 is the 'articulators of politics' and includes the Awajun indigenous people and indigenous political organisations. Group 2 incorporates the 'promoters and executors of policies', namely, the state and corporations. Group 3 is the 'providers of support and legitimation', and is made up of activists and academics. These groups have different roles in the conflicts, so the criterion for organising them is the degree of involvement in the conflicts. Whereas in groups 1 and 2 there is a direct involvement, in group 3 participation is indirect (it is true that activists can have a high degree of involvement in social conflicts, but in this specific research it was not the case; they were participating indirectly). Thus, the conflict is expressed by the tensions between group 1 and group 2; whereas group 3 provides external legitimation, criticisms or support to the previous groups.

Group 1 (articulators of politics)

a) The Awajun indigenous people

In Peru the state has recognised the existence of 52 indigenous peoples (Official Data Base of the Ministry of Culture, 2014); one of these indigenous peoples is the Awajun or Aguaruna people. The social organisation of indigenous peoples is through peasant communities in the Andes and native communities in the jungle. According to the last official information provided by the state (Allpa, 2003), there are 5818 peasant communities and 1345 native communities. However, in 2009, the Directory of Native Communities of the Ministry of Agriculture recorded near to 1500 native communities and a territorial extension of 10 503 888 hectare titled. In addition, there are 2 799,901 hectare of 5 territorial reserves for indigenous peoples in voluntary isolation (Surrallés, 2009).

According to the Vice Ministry of Intercultural Affairs (Official Data Base, 2014), the census of indigenous communities of the Amazon of 2007 estimated there were 55 366 people self-identified as Awajun, inhabiting native communities and *centros poblados*⁵ located mainly in the departments of Loreto, Amazonas, San Martín and Cajamarca. The language of Awajun has the same name and they represent the second most numerous Amazonian indigenous people after the Ashaninkas.

Awajun people are part of the Jivaro ethnic-linguistic family. The Jivaro are made up of the Awajun, Wampis, Shiwiar and Achuar. The last two also live in Ecuador. The Wampis or *Huambisa* are closer geographically to the Awajun. They have historically made political alliances with the Awajun and also participated in the *Baguazo*. According to the last census mentioned above, there is an estimated 10 163 people self-identifying as Wampis.

⁵ *Centros poblados* are small villages created by *mestizo* immigrants and fostered by the state to colonise Amazonian territory. In these *centros poblados* *mestizo* and indigenous peoples usually coexist.

According to the Vice Ministry of Intercultural Affairs (Official Data Base, 2014) “The Awajun have a strong ethnic self-identification, what allows them to have a major internal social cohesion to establish their position against external influences”.

b) Indigenous political organisations

The most important Amazonian indigenous organisation is the Interethnic Association for the Development of the Peruvian Amazon (AIDESEP). AIDESEP is a national indigenous organisation led by a National Directive Council, elected by 9 decentralised offices located in the South, Centre and Northern Amazon; one of these offices is the Regional Organisation of the Indigenous Peoples of Northern Amazon (ORPIAN). According to AIDESEP information (website, 2014), currently these 9 decentralised offices comprise 65 local indigenous organisations which represent 1500 native communities in which 650 000 indigenous peoples live.

AIDESEP has a very well structured organisation, with national, regional and local offices. I focused on the national organisation in Lima in order to understand how they interact with the state and NGOs, how they defend their independence as an indigenous organisation and their political structure. As AIDESEP leaders say, AIDESEP is like ‘our indigenous state’.

I also focused on regional and local leaders and members of AIDESEP. I interviewed key indigenous actors from ORPIAN and the local indigenous organisation of the CENEPA River: the Organisation for the Development of Frontier Communities of the Cenepa (ODECOFROC). In addition to indigenous peoples in the Amazon and members of indigenous organisations, I also interviewed Awajun in Lima who are not activists but are young professional or university students.

Group 2 (promoters and executors of policies)

c) State functionaries:

The state sectors more involved in social conflicts between state, companies and indigenous peoples are the Ministry of Environment, the Ministry of Energy and Mines, the Vice-Ministry of Intercultural Affairs, the Ombudsman and the Presidency of Ministries Council.

In order to understand the discourse and practice of policy-makers and promoters of policies which are rejected by the previous group, I did interviews and observation in key offices of these sectors. I observed the way in which functionaries interact with indigenous peoples and how they address indigenous questions. I also paid attention to how the state conceives development and the role of indigenous peoples in this process.

d) Mining and Oil companies:

There are two important companies – both of them associated with Canadian companies - located in the province of Condorcanqui, Amazon, whose operations comprise Awajun territories. The mining company Afrodita is located in the Cenepa district, and the oil company Pacific Rubiales, which recently obtained the rights for exploiting the 116 oil block from *Maurel et Prom* (French capitals), is located in the Nieva district.

Both of them maintain very tense relations with the close communities and indigenous political organisations. In the case of Afrodita there are judicial claims on-going, and in the case of Pacific Rubiales, indigenous organisations are claiming the right to be consulted before the operations start.

I did informal interviews with representatives of these companies and other companies involved in socio-environmental conflicts with indigenous peoples. The aims of these interviews were to understand the way companies relate to indigenous peoples and what their views are regarding the right to consultation, territorial indigenous spaces and the way in which extractivism is developed in the Amazon.

Group 3 (providers of support and legitimization)

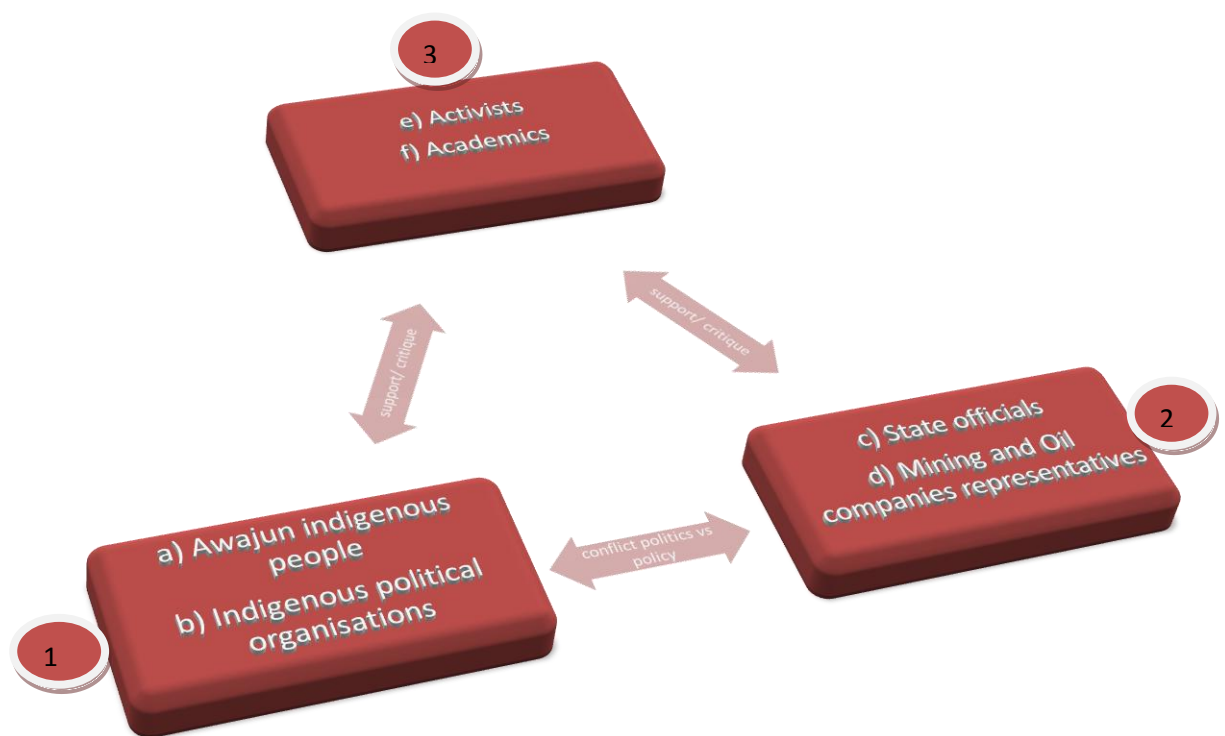
e) Activists:

There are international, national and local human rights and environmental NGOs that support indigenous judicial and political claims. The activist role of some local Church representatives is also important in supporting indigenous claims put forward to the state and companies.

I interviewed and interacted with activists from these NGOs and the Church involved in Awajun political and legal struggles. They helped me to forge relations with Awajun indigenous peoples.

f) Academics:

Academics have had an important role in evaluating the policies and politics related to these conflicts. They also directly or indirectly have argued in favour of or against the governmental policies and the politics of the indigenous movements. I interviewed academics that have deeply analysed the conflicts between indigenous peoples, the state and companies.



In most of the cases in which I approached the groups, I combined the methods of participant observation with ethnographic interviews, unstructured interviews or in-depth semi-structured interviews.

Participant observation is a method that encompasses all the fieldwork experience through an active involvement and interactions with the participants in order to obtain a deep understanding of the essential processes of social coexistence (DeWalt and DeWalt, 2011). This method was very useful to grasp the structural conditions and material constraints of indigenous politics and state policies, as well as the aspirations and political imagination of each participant.

Qualitative interviewing explores the shared meanings that people develop in their daily life social interactions (Rubin and Rubin, 1995). Specifically I used ethnographic interviews which sometimes were formulated as unstructured and semi-structured interviews (Sarantakos, 2005). Ethnographic interviews entail the involvement of the observer in the life of the participant, the analysis of the interactions within local social structures and the observation of local processes in connection to external social phenomena (Burawoy, 1998). Unstructured interviews utilise unstructured questionnaires that contain several open-ended questions that can be changed depending on the circumstances (Sarantakos, 2005). Semi-structured interviews are used in cases in which more specific information is needed (Rubin and Rubin, 1995). I also used a specific type of semi-structured interview called ‘in-depth’, which serves to obtain more deep information and knowledge. The information provided usually encompasses personal matters, such as life experiences, values, cultural knowledge and ideology (Johnson, 2002).

In total I did 64 formal interviews: 33 interviews with indigenous peoples, 9 interviews with state officials, 13 interviews with activists, 4 interviews with company representatives, 5 interviews with academics. Apart from these interviews I had many informal interviews, conversations and exchanges with all these actors.

My data were opinions, declarations, political manifestations and mobilisations, legislation, policies, reports and guidelines. I also used official statistics related to the number of indigenous communities, mining and oil concessions and the number of socio-environmental conflicts, and less formal sources of data such as pop culture and media to contextualise interviews and observations within macro-structures.

5.2.3. Interviews with indigenous peoples, indigenous organisations and activists

I did part of the fieldwork in the department of Amazonas, located in the Northern Amazonian region. In particular I spent around 3 months (February – late April 2013) in two provinces of Amazonas: Bagua and Condorcanqui. In the province of Bagua I visited the towns of *Bagua chica* and *Bagua grande* and the district of Imaza. From Imaza I went to the native communities of Yamayaca and Nazareth. Then, I went to the province of Condorcanqui; I stayed in the district of Nieva and the *centro poblado* of Velasco Alvarado. I did interviews with local and regional indigenous leaders and inhabitants in these districts and native communities, and with indigenous, activists and *mestizos* in the province of Bagua.

The knowledge production in this stage was achieved through participant observation and ethnographic unstructured and semi-structured interviews. In the provinces and districts I met many Awajun and Awajun political leaders. I observed how indigenous peoples interact with the *mestizo* population, merchants, NGOs and the Church in their everyday life.

My interviews in native communities - where the whole population is indigenous - were directed to understand the relation of the Awajun to their territory, the way they organise politically, their history of the *Baguazo*, their view of the extractive industry and the governmental policies, their relations to the companies that are already exploring and exploiting natural resources in the Amazon, their relation to other socio-environmental struggles, their political claims and their views of *Buen vivir*.

In addition, I did in depth semi-structured interviews with national, regional and local indigenous leaders in order to understand their opinion of the current socio-environmental conflicts and their experience of very difficult situations such as judicial persecution, prison, and military and police repression in mobilisations. I asked similar questions to active members of socio-environmental organisations, not necessarily indigenous, but very active in the opposition against extractive industries and policies. I also interviewed indigenous peoples who occupy important positions in national, regional and local governments. Some of these interviews were undertaken in Lima with indigenous national organisations and human rights and environmental activists (October - December 2012; October – December 2013).

As I have previously mentioned, my methodological approach was participatory research with indigenous communities and organisations from a decolonial perspective, so I interacted with the participants not only for obtaining information, I also discussed with them the orientation of my research in order to reconstruct my own epistemological position. For instance, when an indigenous person asked me why I was doing this research and I answered that I was trying to contribute to the protection of indigenous rights, he replied that they didn't want 'protection', they wanted people to respect them '*as active actors of our own development*' (Indigenous interview 2, 20-10-2012). This resulted in a shift in the orientation of my research. I was not researching indigenous peoples solely to identify the tensions they have with the state and companies; indigenous peoples were using my research to express that they were not mere subjects of protection but active politicians and proponents of policies. My research, apart from its academic value, became a medium through which indigenous peoples could overcome the essentialised views usually created of them.

The research in the Amazon was not easy because of the environment of distrust due to the judicial persecution against indigenous leaders after the *Baguazo*. A *mestizo* local in Nieva told me that I had to be very cautious because indigenous peoples could think that I was an undercover policeman and therefore, an intruder. I was able to enter into native communities and talk with local and regional indigenous leaders thanks to the alliances I made previously with activists. As I was fully immersed in the indigenous agenda (and I really was), I had the right to interact with the indigenous peoples.

5.2.4. Interviews with state officials, company representatives and academics

Regarding group 2 in this research, I did semi-structured interviews with state officials in order to understand their views regarding extractive industries, environmental policies and indigenous peoples, as well as their views on development and socio-environmental protests.

Thus, I did interviews in key institutions such as the Ministry of the Environment, in charge of the control and regulation of environmental standards. I paid particular attention to the way the state officials undertake the control and monitoring of extractive industries and the protection of indigenous peoples affected by environmental degradation.

In addition, I undertook interviews at the Ministry of Energy and Mines, in charge of providing concessions to exploration and exploitation of mining activities. I observed how state functionaries understand the relation between mining and development, the way in which mining industries influence public policymaking and how the state officials solve the contradictions of a Ministry in charge of promoting extractive activities and, at the same time, of approving the Environmental Impact Assessment studies of these activities.

I also did interviews at the Vice-Ministry of Intercultural Affairs, which is an important Department of the Ministry of Culture. This Vice-Ministry is in charge of the regulation and protection of indigenous rights, the identification of indigenous peoples and the supervision of consultation processes. I focused on the way they consider the current indigenous institutionality in the state, the political power of this Department in relation

to other state branches, and the way in which the consultation processes are being implemented.

The Ombudsman has offices in charge of indigenous affairs, environmental issues and the monitoring of social conflicts. I did interviews with state officials of these offices in order to understand the way in which the state was approaching social conflicts related to indigenous peoples and extractive industries. I observed also how the Ombudsman perceived the contradictions within the state expressed in the enactment of policies in favour of indigenous peoples and at the same time, the aggressive promotion of extractive activities within indigenous territories.

The Presidency of Ministries Council has offices in charge of the management of social conflicts and national development. I did interviews and observation in these offices with the aim of exploring the developmental perspective of the state, how they manage social conflicts with indigenous peoples, and what their national priorities were.

The interactions with state officials entailed informal conversations, formal interviews, and the analysis of the work they were developing, as well as their policy and legislative projects regarding social conflicts, indigenous peoples' rights and extractive industries.

I also interviewed representatives of mining and oil companies involved in the struggles of the *Awajun* and other relevant and similar struggles in order to understand how the business sector related to the government on the one hand, and to indigenous and local communities on the other hand. Finally, I interviewed academic specialists that have studied these conflicts. In total, I spent around 7 months (November - December 2012, May 2013 – September 2013) in interviewing these different actors.

5.3. Data Analysis

Techniques for data analysis

I analysed my data using content analysis, narrative analysis, conversation analysis, critical discourse analysis and visual interpretations. Content analysis allows for exploring large amounts of textual information systematically in order to identify the patterns of the words used, the way they are regularly used, their relationships and their internal structures (Grbich, 2007). Specifically, I used pattern codes, a type of data reduction that groups the selected information into specific topics (Sarantakos, 2005), in order to find emergent issues and explanations regarding my research. Thus, I found that *Awajun* people were more concerned with the word 'extractivism' than 'neoliberalism', that they emphasised the word 'territory' more than 'land' and that for state functionaries the word '*interculturalidad*' was more important than '*multiculturalidad*' or '*pluriculturalidad*'.

Then, I integrated and connected the different aspects of the research in order to present a detailed and coherent view of the problem. For this purpose, I used the software N-Vivo, which was very useful for organising and systematising the data according to codes.

In order to analyse the transcripts of the most important in-depth interviews I used 'narrative analysis', an approach that focuses on stories told by participants. This

approach sometimes focuses on the internal structures of language or on a socio-cultural dimension beyond language structures in order to grasp broader interpretative frameworks that people use to explain their daily life (Grbich, 2007). This last trend has been especially relevant to analyse the narratives of resistance in the context of socio-environmental conflicts.

I analysed the unstructured interviews by using conversation analysis, where the central goal was the exploration of the procedures used by the speakers to express themselves in different socially mediated situations (Grbich, 2007). The analysis focused on the natural communicative process in different settings.

I analysed the political declarations and, in general, transcript interviews with critical discourse analysis. This is a method directed to develop a detailed explanation and critique of the ways dominant discourses influence the knowledge, attitudes and ideologies in society (Dijk, 1993; Weiss and Wodak, 2003). This method of data analysis helped to explain how specific discursive structures determine mental processes, or facilitates the formation of social representations. Thus, the use of rhetorical figures can influence the formation of opinion and social models, such as the metaphor of ‘the dog in the manger’, used by the ex-president Alan Garcia to refer to indigenous peoples and socio-environmental activists (see section 6.2).

The process of data analysis

The interview data and the secondary material were ordered, aggregated and transformed in three substantive case study chapters through a process of reflection of my fieldwork experience and my own background as legal professional and Peruvian *mestizo*. Thus, the case study chapters were not a collection of “findings” from the interviews, but an organised theoretical account constructed on the basis of the voices of the actors involved in socio-environmental conflicts (indigenous peoples, state officials and company representatives), and historical academic literature, political declarations, laws, policies and my own experience, what helped me to construct the main arguments of the thesis.

When I analysed the interviews with indigenous peoples I put special attention to the assertions that revealed the tensions inside the communities and those that expressed the claims of self-determination and territoriality in order to have a balanced account of the conflicts. Then, I decided to quote those interviews that more clearly expressed these ideas and claims. The interviews not chosen, however, were not neglected. On the contrary, these interviews were accurately analysed for the general understanding of the indigenous movement. When I analysed the interviews with state officials and company representatives I put special attention to those interviews that expressed the way in which they relate to indigenous peoples and how they understand the idea of development and indigenous rights. Then, I decided to quote those interviews that clearly expressed the interests, views and arguments of these actors in order to provide a detailed description of the state and company position in relation to indigenous peoples.

In addition to the interviews, I elaborated the case study chapters with the help of specialised academic literature. The analysis of this literature was crucial to provide historical soundness and social context to the argument developed in these chapters. In

specific I used historical literature of the first decades of the last century to explain the evolution of indigenism, the debates around the elimination of peasant and native communities, and how indigenous peoples were portrayed by state officials, politicians and Peruvian intellectuals. The specialised literature was also important to discuss further the meaning of Amazonian indigenous ontologies and the emergence of the Amazonian indigenous movement and in this way, it provided meaning and context to analyse the interviews with indigenous people. In sum, I chose the literature that better explain the reality of indigeneity in Peru in historical perspective.

The laws and policies analysed in the case study chapters were selected because of their importance to explain the evolution and permanence of coloniality in juridical and political terms and in different historical periods. These legal devices were also important to understand the political context in which indigenous claims emerged and the rationale of indigenous protests. In specific, I decided to quote the norms that constituted milestones for recognising or denying indigenous rights.

The political declarations of Peruvian politicians and indigenous political organisations (in media articles and videos) were also very rich data that helped to construct the case study chapters. In specific, I chose those declarations that clearly explained political aims in relation to the political economy, extractive industries and indigenous rights, and political articulations amongst social actors. These and other declarations were relevant to understand the contentious context in which the research was undertaken.

Part of the organisation, systematization and analysis of the data was made during the fieldwork in Peru. This was an advantage because during this process I maintained contact with the people I interviewed (state officials, indigenous peoples and company representatives), which was important to elucidate any doubts and complexity of the declarations and claims. In addition, the writing process of the case study chapters was made in Lima Peru, what allowed me to be close to the tensions and conflicts, as well as to better contextualise the priorities and the aspirations of the indigenous movement. It also allowed me to identify key issues and write and re-write the chapters in a process of constant reflection. It is in this context of closeness to the indigenous movement claims and to the responses of policy makers and the business sector that I decided to develop the arguments of self-determination and indigenous territorial rights. I noticed that what was at the basis of the tensions, discussions and divergences was the recognition of the politics and legality of indigenous self-determination, although this issue was not always explicitly recognised by some participants.

It is important to mention that the arguments developed in the case study chapters were elaborated also because of my own background and experience as Peruvian lawyer with Andean familial roots. My professional background allowed me to better understand the processes of policy-making and the use of the legality for different political purposes. My personal background was relevant to understand the feeling of structural discrimination in Peru and the disrespect of indigenous culture in the state and the society. My own background also allowed me to construct relationships of trust and empathy with the participants during and after the fieldwork. Thus, during the process of data analysis and writing, I had the opportunity to discuss further with some participants ideas and notions relevant for the research, such as indigeneity and territoriality.

5.4. Ethical issues

The ethics of this research follows the British Sociological Association's Statement of Ethical Practice (2002, updated in 2004)⁶ and the Code of Ethics of the American Anthropological Association (1998).⁷ In addition, this research paid special attention to three important research ethical principles: informed consent, confidentiality and beneficence.

Regarding the principle of *informed consent*, the research entailed an open interchange between the researcher and the participants. Thus, in order to avoid deception I provided in advance a letter to the potential participants in which I explained the aims of the study, the purpose of the interview, the structure and time of the interview, the kind of questions I would ask, and their rights related to voluntary participation, anonymity, confidentiality, benefits and avoidance of risk. In the case of state officials, company's representatives, academics and activists, the letter was sent by email and then it was given to them directly on the day of the interview. In the case of the indigenous communities the contact was made through the leaders of the community and then I explained personally to each participant the content of the letter.

In the aforementioned letter I emphasised that participation in the research was completely voluntary, that the participant could withdraw at any time without any consequence or any explanation. In addition, I explained in the letter that if they did withdraw from the study their data would not be used or would be used only with their permission.

Another important principle is *confidentiality*. This implies that the participants need to agree explicitly in a written document about the use of the information provided (Kvale, 1996). In order to respect the principle of confidentiality, participants' identities were protected in this research. Where interviewees decided to remain anonymous I employed numeric and anonymous codes. I only named participants where they had particular expertise in specific issues around the conflict (for example, academic specialists in indigenous rights), or held an important position in the conflict (for example, indigenous leaders). However, I informed them that they had the option to remain anonymous. Finally, in order to preserve the anonymity, privacy and the confidentiality of their responses, I stored the digitally recorded interviews, transcripts and interview notes in a locked cabinet, and I used password protected electronic files on my personal computer. No one other than me had access to this information.

Another important ethical principle is *beneficence*. This suggests that the researcher must reflect on the impact the research may have in order to avoid any possible harm to the participants, and ensure benefits for them. The focus must not be only on individual participants but also on the whole community they represent (Kvale, 1996). As a researcher, I was aware of the social tension and lack of trust that socio-environmental conflicts had created among the groups involved. I expressed very clearly in the above mentioned letter, and personally to each participant, that in order to avoid any emotional stress or discomfort, they should be aware that this was an academic study that sought to capture and understand a diverse range of perspectives around the conflicts. Thus, it

⁶ <http://www.britisoc.co.uk/media/27107/StatementofEthicalPractice.pdf>

⁷ <http://www.aaanet.org/committees/ethics/ethcode.htm>

provided space for major concerns of Awajun communities and indigenous leaders to be heard, as well as the opinion and perspectives of state functionaries and company's representatives. Finally, I highlighted the benefits of the participation in this research, in the case of indigenous peoples and movements, I emphasised that the potential benefits of their participation included the opportunity to voice their values, needs and aspirations in order to foster their political articulations. In the case of the state and company representatives, I explained that the benefits were related to the possibility of resolving the conflicts and constructing a better social climate.

Chapter 6: Indigenous politics and indigenous rights in the Peruvian Amazon: the meaning of the '*Baguazo*'

6.1. Introduction

In this chapter I analyse the different explanations of the '*Baguazo*' presented by the government, activists, intellectuals and indigenous peoples, the processes of inclusion/exclusion deployed by the Peruvian state against indigenous peoples, the Amazonian indigenous ontologies and the way in which indigenous peoples relate to liberal legality through a process of confrontation, appropriation and 'moving beyond'. The general aim of this chapter is to illustrate how the *Baguazo* is not a consequence of 'neoliberalism', 'development' or 'underdevelopment', but a consequence of a history of institutional and ontological violence which involves laws, policies, discourses and economic and political interventions.

In the first part, I focus on the direct causes of the *Baguazo*: the expansion of extractivism on indigenous territory since the nineties and the denial of indigenous rights. Then, I identify elements of continuity in different periods, making it possible to observe the *Bagua* struggle not just as a recent history that started with neoliberalism but as a history of violence in which two rationalities are in dispute for a vital space since colonial times.

Then, in the second part, I investigate the legal and ontological violence exerted by the state against indigenous peoples in this history of violence. I firstly focus on Andean communities, their historical process of territorial and identity de-composition and their mechanisms of resistance. I explain the relation they have with liberal capitalism through the analysis of the legal concept of community and debates on indigenism. Then, I explore the meaning of the President Velasco nationalistic revolution for indigenous peoples and the constitution of peasant communities. I also explore Andean indigenous peoples' dispossession because even though their historical process in relation to Amazonian indigenous peoples is different, the state legal mechanisms for inclusion and exclusion and the normalising rhetoric are similar.

In the third part, I analyse the application of peasant community's legislation on Amazonian indigenous peoples as a stage of the history of institutional violence above mentioned, and discuss the idea of property and territory from Awajun perspectives. Finally, in order to understand the deepest meaning of the conflict, I explore Amazonian indigenous ontologies and the complexities and disputes around today's Awajun ontology and political organisation in relation to extractive industries and the state.

6.2. *Baguazo* short-time memory: the dog in the manger

Most investigations (Amnesty International, 2009; Congress Minority Report, 2010; Ombudsman Report, 2010) and studies on the *Baguazo* (Hughes, 2010; Schmall, 2011) focus on the aggressive extractive policies of President Alan García or, in general, on the neoliberal policies of the nineties as the origin of the event.

The immediate history is as follows: In 2007 President García received from the Congress special legislative powers to implement the 2006 Free Trade Agreement between the U.S. and Peru. Under this power he approved a package of decrees known as the ‘Law of the Jungle’ in 2008. According to García *“this legislation will allow our country to go on the path of modernity... investments and jobs. Thus, we will take advantage of the extraordinary conditions of the global market”* (2008b: a4). Indeed, the new legislation sought to accommodate the national legal system to the requirements of the global markets by facilitating the increasing of foreign direct investments and Peru’s integration into the global economy (Hughes, 2010; Schmall, 2011).

The ‘Law of the Jungle’ was supported by the ‘The Dog in the Manger’ ideology (Bebbington and Humphreys, 2011), which was reified in an article written by President García in *El Comercio* (2007), a daily associated with the political right: *“there are millions of wood hectares that are idle, millions of hectares that communities have not cultivated... there are many resources that are not transferable, do not receive investments and not produce jobs. And all this due to the taboo of old ideologies, laziness, intolerance or the law of the dog in the manger: If I do not, nobody will do it”* (a4).

For President García, the land and resources of the rich Amazon are not exploited because of ‘old ideologies’ and the envy of indigenous peoples who are considered ‘dogs in the manger’: as they reject any attempt by intruders to exploit their territory, they prevent companies to derive value from the exploitation, and the state to obtain revenues through taxation. In addition, for García the indigenous communal ownership is an obstacle to development and modernisation, the cause of the poverty of the Amazon (Bebbington and Humphreys, 2011; Rénique, 2009).

Amazonian indigenous peoples were offended by García’s writings. AIDESEP, for example, protested very strongly in a public letter: *“We are called ‘dog in the manger’ for defending the life of our indigenous peoples and protesting against the imposition of external models of development that responds openly to transnational interests...”* (2007).

AIDESEP promoted a protest against that legislative package which ended up with an agreement in September of 2008 to negotiate territorial rights, self-determination, health and education, and cultural integrity. However, the government deliberately delayed those negotiations that had been scheduled and persisted with the most controversial decrees (Rénique, 2009). According to AIDESEP the decrees were illegal because under the ILO Convention 169 (which was ratified by Peru in 1994), these laws should have been issued after a process of consultation with indigenous communities (Bebbington and Humphreys, 2011). As analysed in Chapter 3, Convention 169 establishes the indigenous peoples’ right to require free, prior and informed consultation over all government decisions that affect their collective rights.

In addition, each specific decree was considered harmful for indigenous peoples. AIDSESP's president, Alberto Pizango (2008), asserted that decrees 1090 and 1064 had to be repealed because those decrees threatened indigenous territorial rights and the right of consultation by allowing that 45 million hectares of the Peruvian Amazon could lose their protection as forestry areas and be transferred to extractivist companies. But the most controversial was decree 1015 because it threatened the very existence of indigenous land and organisation by diminishing the protections guaranteed by Peruvian Law, such as the requirement that in order to transfer indigenous land to outsiders, two-thirds of the indigenous community must agree. The decree reduced this requirement to a simple majority. For these reasons, AIDSESP promoted a second general strike on April 9, 2009.

Perhaps because of the notorious position of AIDSESP, a common view on the *Baguazo* is the supposed 'manipulation' of the masses by Alberto Pizango. However, important Awajun local leaders (Indigenous Interview 28, 15-04-13; Indigenous Interview 18, 12-04-2013) asserted that the peoples were not organised by Pizango but were self-organised. One of the main assessors of AIDSESP (Indigenous interview 30, 26-04-13) asserts that AIDSESP is just the transmitter of the national indigenous movement voice; national decisions are not taken by the AIDSESP president but by a national council. That is what happened in 2009. As the Congress delayed negotiations to derogate the decrees, there was a national council in the city of Iquitos (located in the Amazonian basin) and the local indigenous leaders agreed to promote a new mobilisation in which around 2000 people participated. Indigenous peoples had no fire arms, just lances that are used as symbols or cultural artefacts. Protesters received provisions sent by the communities, water from *Bagua* municipality and food from different producers committees, as well as support from schools and churches (Congress Minority Report, 2010). This was reaffirmed by non-indigenous peoples who witnessed the event (Anonymous interview, 16-04-13; Activist interview 4, 02-04-2013).

By June 5, indigenous Awajun and Wampis had been blocking the *Curva del Diablo* highway for two months and García ordered policemen to clear the highway. Around 500 officers fired tear gas and bullets into the crowd (Schmall, 2011). Santiago Manuin, one of the Awajun historical leaders, was hit with 7 bullets while he was crying for peace with his hands up. The disproportionate actions were understood by the Awajun as an act of war, and for them the death had to be revenged (Congress Minority Report, 2010). The term 'revenge' is not an exact translation of *etsagtumamu* which means 'what fortifies' or 'what reconstitutes'. Thus, revenge is a familial obligation for the person killed, a corporative matter: the death of a family member affects the group as an illness and generates the obligation of fortifying the family. These concepts and practices are active, particularly when the death of a person is attributed to witchcraft or a violent act (Congress Minority Report, 2010). This idea was reaffirmed by a young Awajun-Wampis writer (Indigenous interview 3, 04-04-2013): "*for Awajun's ancestral vendetta rules, if you kill an Awajun, the Awajun kills as well, he has to do something. The vendetta of Awajun is cultural, even against the Wampis.*"

In this war scenario, Awajun took police arms and then proceeded to kill some of them. At the same time in the near district of *Imaza*, other Awajun groups were protesting at the Service Station N° 6 of the national oil company. People were holding some policemen for hours and only when they heard on the radio that policemen had shot

unarmed Awajun and killed them in the *Curva del Diablo*, they killed the hostages. The three Congress reports that investigated the *Baguazo* concurred that deaths in Station N° 6 were result of the diffusion of what was happening in the *Curva del Diablo* and that the reaction of the population was so intense that they overcame the authority of the leaders.

According to Amnesty International (2009) there were hundreds of people wounded (mainly Awajun and *mestizos*); 33 mortally wounded, 23 of which were policemen, 10 civilian (5 indigenous and 5 *mestizos*). Of 23 policemen, 11 died as hostages in the Service Station N° 6, while the other 12 policemen died during the operation. The dead body of Captain Bazan was not found.

García defended the government's violent actions to clear the highway and blamed the Awajun for thinking they could decide not to exploit the resources under their territory. He claimed in an interview: "*They are not first class citizens... 400 natives cannot say to 28 millions of Peruvians that we have no right to come here... [They] want to lead us to irrationality and primitivism...*" (2009). Then, indigenous leaders were blamed for killing, terrorism and sedition supposedly incited by radical Left politics. Alberto Pizango had to seek political asylum in Nicaragua (Rénique, 2009).

As the international criticism increased and protests of solidarity started to emerge in the country, García repealed the most contentious decrees (1015, 1064 and 1090) and had to admit that the government had the obligation to consult indigenous peoples before approving that legislation.

6.2.1 The history of *Baguazo* as a history of deception

Although García's politics and policies triggered the *Baguazo*, the analysis of this political event cannot be limited to García's violent rhetoric, the enactment of some decrees or the violation of indigenous rights protected under International Law. It is important to go further back.

During the frontier conflict with Ecuador in 1981 and 1995 Awajun people supported the Peruvian army with logistics, food and knowledge of the area. Moreover, young Awajun and Wampis were the most recruited for military campaigns (ODECOFROC, 2009). After the *Cenepa* war of 1995⁸ Awajun organisations participated in a negotiation table at the Ministry of External Relations in which the states of Ecuador and Peru agreed to establish a frontier zone of ecological protection with the guarantee of respecting indigenous territorial rights. The provisory agreement was to create in the Peruvian area (in the Amazon region) the Reservation Zone 'Santiago-Comaina' (1999) with the aim to be later categorised as a National Park (the Ecuadorian state created the bi-national Park '*El Condor*').

The Reserved zone included an area where some mining claims existed. These were registered by the state in 1993 with no concern for the ecological fragility of the zone

⁸ The *Cenepa* war was a short army conflict between Ecuador and Peru (January 26 – February 28, 1995) for Amazonian territory. The conflict ended up with diplomatic negotiations that led to the signing of the Brasilia Presidential Act as a peace agreement on 26 October 1998, and the formal demarcation of the border on 13 May 1999.

and indigenous territory. Nonetheless, these mining claims had to have a favourable opinion of INRENA (the office in charge of natural resources management and ecological sustainability) to initiate the exploration. In 2001, when Afrodita Mining requested authorisation for exploration and exploitation of its 39 mining concessions INRENA issued a technical opinion about the incompatibility of mining activity in the zone (ODECOFROC, 2009).

In March 2004, the representatives of native communities located in the Reserved Zone ‘Santiago Comaina’⁹ gave their approval for the creation of the National Park “*Ichigkat Muja-Cordillera del Cóndor*”. They renounced legal ownership of the land in exchange for the area being protected as a National Park (Durand, 2011).

According to an investigation led by the ODECOFROC research team (2009), the mining company and its legal assessors designed a strategy to convince the Ministry of External Relations and the Ministry of Defence that the best guarantee of frontier integrity was the development of mining in the zone. ODECOFROC (2009) has documented the meetings between Afrodita president and high state functionaries to pressure INRENA to modify its technical opinion and declare the compatibility of mining in the protected zone (see also Durand, 2011). Finally, INRENA emitted a second decision, proposing a new area for the park with no consultation with indigenous peoples and with no technical arguments: the proposed National Park was reduced from 152.873 hectare to 88.477 hectare, letting almost half of it for mining use. This reduction was officialised by the decree 023-2007-AG of August 2007 of Garcia’s government, which created the National Park *Ichigkat Muja-Cordillera del Condor*. The same week many mining requests were approved in the zone left free, including Afrodita concessions and others transferred later to the Canadian Company Dorato Resources (ODECOFROC, 2009; Durand, 2011).

It is important to mention that Afrodita concessions and the company as such have been totally sold to *Dorato Perú* to appear as a Peruvian company although it is still connected to Canadian investors. In this way, they seek to elude the constitutional impediment of transnational companies to undertake mining activities close to frontiers (Article 71 of the Constitution) (Durand, 2011).

For Awajun people, who relied on this process and actively participated in it, the final result was perceived as an open deception in which the area that they had ceded to the Peruvian state to create a National Park (in order to give ecological and political stability to the international frontier with Ecuador) has been legally transformed into a mining zone (ODECOFROC, 2009). The decision to reduce the Park was received as an offence for the Awajun and Wampis (Barckley and Santos Granero, 2010), so this situation is located at the basis of the claims promoted by indigenous organisation that led to the massive mobilisation in 2008 and the *Baguazo* of 2009 (ODECOFROC, 2009).

⁹ Represented by the Organisation for the Development of Frontier Communities of the Cenepa (ODECOFROC) and the Indigenous Organisation for the Development of Alto Comaina Communities (ODECOAC), both local committees of the Regional Organisation of the Indigenous Peoples of Northern Amazon (ORPIAN), which is a regional office of AIDSEP.

The deception and dispossession of indigenous territory, as well as García's 'dog in the manger' discourse and legislation have colonial roots. Indeed, although García's neoliberal pressure on indigenous territory is based on assimilation theories (see section 3.2.2) and the modernisation view of development (see section 4.2), it goes beyond that. Following a colonial logic of progress, García views indigenous peoples as primitives against modernity, thus, the only path to development is to foster the commodification of indigenous territories and resources. Therefore, García's policies for the Amazon and indigenous peoples are similar to those of the XVI century: the Amazon is an empty and wasted territory to be exploited and its inhabitants are obstacles to modernisation (Rénique, 2009; Espinosa, 2009), so they have to be excluded or radically included into the modernity project.

The history of the *Baguazo* indeed is part of a longer history of violence that did not commence with the neoliberalism of the nineties or the modernising discourse of development of the sixties. It is a continuous and slow violence (Nixon, 2011) with sporadic episodes of grandiosity but an often silent presence. The mass media converted the *Baguazo* into spectacular news by showing a situation of open violence and many dead people; but the violence had always been there in the continuous attempts of politicians, companies and external actors, in colonial and post-colonial times, to assimilate indigenous peoples. The ecological pressure on indigenous territories because of the expansion of economic activities, the spread of new illnesses for indigenous peoples, the small oil spills on Amazonian rivers, the re-production and normalisation of racist discourses, and so forth, all of them are facts that continuously occur in not spectacular ways but that constitute a dynamic and endless slow violence against indigenous peoples and their environments. In the next section, I explore the roots of this violence and the legal and the economic mechanisms as well as the discursive elements that have supported it.

6.3. Legal and ontological violence in the Andes

To understand the legal and ontological violence against the Awajun, it is important to observe how this violence has been constructed in the colony and reaffirmed in the constitution of the Republic as violence against the Indians. The Andes and the Amazon have testified this violence with different degrees and emphasis, but the same rationale. And indigenous peoples have resisted this with similar means and actions.

6.3.1. The Law of conquest and resistance

For a young Awajun student of Political Science (Indigenous interview 2, 20-10-2012), what led to the *Baguazo* was the lack of concern shown by governments towards their indigenous population. Even more, he argues that beyond the questioned decrees, the state since the beginning of the Republic until today has excluded indigenous peoples from their own territory. Western legality has been the form in which indigenous peoples have been excluded from their own territories, even in cases in which this legality recognised some indigenous rights. That is, the exclusion from indigenous cosmologies through the inclusion deployed by liberal legality. This legal violence is located at the very core of events such as the *Baguazo*. To understand this process it is important to analyse with detail a key legal institution for indigenous peoples: the community.

The community is a legal creation that has colonial roots. In fact, the antecedents of the community are the Andean *ayllu* (the social basis) and the Iberian commune (the external pattern of reference) (Matos, 1976; Golte, 1992). The *ayllu* was the basis of the socio-legal organisation of the Inca Empire: it was a group of individuals that recognised the same ascendancy and were common possessors of a land worked collectively. A group of *ayllus* together constitutes a *marka*, a higher territorial space (Miguez, 2010).

Mainly in the Andes, the Law of Spanish conquest allowed the exploitation of natives through the constitution of *encomiendas*, a title granted to conquerors with the condition that they settle down and live in the area (Ramírez, 1996). Then, during Virrey Toledo regime in 1570 the legal figure of *reducciones* (reductions) or *pueblo de indios* (Indians towns) was created based on the *ayllus* and *marka* (Del Castillo, 1992). The *reducciones* were re-settlements and grouping of disperse *ayllus*, respecting land possession for communal usufruct (Matos and Fuenzalida, 1976). The aim of this organisation was to control indigenous populations, to collect taxes, use cheap labour and foster catholic indoctrination (Matos, 1976). This regime consolidated exploitation mechanisms such as *mita* and *yanacónaje* in favour of the *encomienda* and central and regional power. The *Yanacónaje* was a labour system in favour of individual Spaniards in which the Indians undertook compulsory work for free in exchange for a plot to maintain their family. The *mita* was a compulsory labour system under Spanish dominion in which each community had to provide each month 1/7 of its men between 18 and 50 years old to Potosi and Huancavelica mines. The *mita* was officially abolished in 1810 but in reality, apart from its more oppressive forms, it did not disappear in the Andes. Other taxes such as the *camaricos* (contribution in species) were maintained even by Republican governments until 1854 (Fuenzalida, 1976).

But the history of conquest is also the history of resistance. After the imposition of colonial rule there were several voices that protested against colonisers abuses. De las Casas' argument for the humanity of Indians against Sepúlveda's denial of Indians' human condition is the first ontological debate between two Western logics: one humanitarian and the other instrumental. The *Mestizos* Garcilaso de la Vega (1539-1616) and Guamán Poma de Ayala (1550-1615) were also early defenders of Indians against Spanish abuses. The former in his *Comentarios Reales* attempted to rescue Inca tradition and proposed to solve the conflict with *mestisaje* (Chang-Rodríguez, 1984); the latter denounced Indian exploitation directly to the Spanish Crown and wrote *Primera Nueva Crónica y Buen Gobierno*, a subversive book which denounced colonisers' injustices and analysed the social status of Indians during the first decades of colonisation (Chang-Rodríguez, 1984; Ferrari, 1984).

The resistance was also made through the appropriation and transformation of Spanish legality and culture. The conformation of communal systems allowed the people to maintain part of their resources and traditions: organisation, language, technology, beliefs and values (Matos, 1976), so it allowed the coexistence of Andean and Christian cults. The latter is expressed through the veneration of a patron saint of the community (introduced by the indoctrination policies); the former is expressed through the maintenance of Andean cosmology: the *Pachamama* (mother earth), the mountains, dead people, animals and other ecological components considered beings of good or bad spirits (Matos, 1976). Another means of resistance were the rebellions led by Inca descendant Santos Atahualpa (1742–52) in alliance with Ashaninka peoples in the

Central Jungle, and the simultaneous Andean rebellions of Tupac Amaru II in Southern Peru and Tupak Katari in today's Bolivia (1780–82) (Rénique, 2009).

The abuses faced by indigenous peoples supposedly would have finished with independence, but this was the beginning of a process of violent inclusion. One of the main debates at the origin of the Republic was if indigenous communities must be dissolved or not. From the liberal argument of Simon Bolivar the communities were a colonial institution that must be suppressed in order to transform Indians into free citizens of the new nation (Del Castillo, 1992; Barclay, 2001). Thus, Bolivar eliminated the legal protection of communities so they were transformed into groups of small landlords. However, in the vast majority of national territory, the abolition of protected barriers of the colonial era constituted the point of departure for systematic dispossession exerted against the communities and the development of a new class of feudalists (Matos and Fuenzalida, 1976).

Moreover, the elimination of black slavery in the 1880s generated a labour crisis which they attempted to overcome with the importation of Asian 'coolies' and the reinstallation of *yanaconaje*. The *yanaconaje* allowed, within a special contractual type of leasing, the exploitation of huge areas without the landlord making major investments or assuming the risk of production. It served as well to consolidate the necessary workforce by generating an indirect mode of exploitation (Matos and Fuenzalida, 1976).

The community as a legal category, then, is part of the indigenous history of decomposition, re-composition, plunder and also resistance among Andean indigenous peoples. This legal model was later transplanted to Amazonian peoples but ignoring their different reality and historical process. Not only politicians and policymakers ignored Amazonian indigenous peoples, but also the indigenists, who focused on the Andes, neglecting the Amazon.

6.3.2. The ontological violence: the debates on indigenism

The legal violence deployed since colonial times has been accompanied by an ontological violence against the Indian, exerted by those who see indigenous peoples as primitives and by those sympathetic with the emancipatory potential of indigenous struggles. This ontological violence that remains in the context of the *Baguazo*, can be observed in the debates around indigenism and the first wave of legal indigenism, namely, the epoch of the first recognition of indigenous rights by the national legislation.

Although the roots of indigenism can be found in the humanist and Christian philanthropic theses of De las Casas (1474-1566); and the colonial critical chroniclers Guamán Poma and Garcilaso de la Vega; in its modern version, Peruvian indigenism was born in the last decades of the XIX century – mainly in Cuzco, Lima and Puno (Miguez, 2010; Chang-Rodríguez, 1984), occupying two main areas: one socio-political (which was socially progressive) and the other cultural (which was aesthetic) (Lauer cited by Degregori and Sandoval, 2007).

The precursors of this modern indigenism were a well-educated elite of *mestizo* writers, intellectuals and activists who emerged in the cities and supported indigenous demands

(Grijalva, 2010; Miguez, 2010). The twenties was the golden epoch of the movement with important intellectuals such as José Carlos Mariátegui, Jorge Basadre, Julio C. Tello, Luis Valcárcel, José Uriel García, and many indigenist newspapers and magazines such as *Amauta* (1926) published by Mariátegui, and *El Deber Pro Indígena* (1912-1917) published by the *Pro Indígena* Association of Pedro Zulen and Dora Mayer. Indigenist intellectuals, who had been influenced by Mexican and Soviet revolutions, denounced the attempt of official Law to favour the *gamonal* or *hacendado* (feudalist) and the oligarchic class, ignoring the poor indigenous peoples (Miguez, 2010).

This movement was simultaneous of many indigenous mobilisations against heavy tax duties and the abuses of *hacendados*. For instance, in 1915 Teodomiro Gutiérrez took the name *Rumi Maqui* (Quechua for ‘Stone Hand’) and led a radical revolt in Puno, attempting to restore an Inca government of Indians (Becker, 2006). The voices of intellectuals and the pressure derived from rebellions put the indigenous question in the political agenda under President Nicolás de Pierola (1895-1899) up to the government of President Augusto Leguía (1919-1930).

This cultural and political indigenism was thus translated into specific laws and policies, becoming what I call the ‘first wave of legal indigenism’ because during this epoch indigenous peoples were for first time legally recognised as subject of specific rights. In fact, the legal debates in this era were, again, centred on the legal recognition of indigenous communities: Francisco Tudela (1905) argued that the ‘socialist’ indigenous collectivistic regime generated unproductivity because Indians had no incentives to work the land properly as private owners did; then, private property was the only institution that could stimulate the development of agriculture. Vicente Villarán (1907) defended the community existence as a legal person and explained the indigenous backwardness as a consequence of lack of infrastructure to help selling their products. Against this evolutionist model, Castro Pozo (1924) wrote the first ethnographic description and an anthropological defence of the community (works cited by Miguez, 2010).

Thereafter, during 1920-1930 there were different indigenisms (Miguez, 2010): on the one hand, a conservative indigenism of bourgeoisie intellectuals promoted a racism hidden by paternalism and capitalist modernisation (Wise, 1983); on the other hand, Marxist indigenism espoused a particular theory about the destiny of indigenous communities: their transformation into socialist cooperatives of production (mainly in Castro-Pozo: *Del ayllu al cooperativismo socialista*, 1936). There was also an official indigenism promoted by the developmentalist government of Leguía (1923– 1927 and 1927–1930). In fact, radical demands of rural indigenous uprisings were rapidly assimilated by the modernising discourse of President Leguía, who implemented superficial and conservative reforms (Grijalva, 2010; Wise, 1983; Varese, 1978). Indeed, Leguía’s discourse (‘to incorporate the Indian to national society’) was very racist at its basis because the Indian – in the process of incorporation – had to be educated and civilised (Urrutia, 1992).

During Leguía’s second government there were three positions regarding the existence of indigenous communities: liberal (radical elimination of community/ hegemony of private property); moderate (gradual suppression of community); reformist socialist or protective (continuity of community as a socialist cooperative) (Miguez, 2010). To some extent, Leguía chose the last position and gave for the first time a juridical status to

communities, emphasising a protective role of the state (Wise, 1983). In fact, between 1824 and 1920 indigenous communities existed in reality but were not legally recognised. From 1920 the legal existence of indigenous communities was recognised (Article 58 of 1920 Constitution) and their land was protected by special legal provisions: *inembargabilidad* (it cannot be mortgaged), *imprescriptibilidad* (it cannot be lost by the passing of time with no occupation) and inalienability (it cannot be sold). The reason of this special regulation was to avoid fraud similar to those which had occurred in the past by the *hacendados* who expanded their lands by occupying communal lands. Indeed, in the Republican period with the growing of *haciendas* at the expense of communities, Indians lost the majority of their land, being displaced to the poorest highlands (Del Castillo, 1992).

During 1920-1940 indigenism had an intermittent and peripheral role inside the state, its most salient outcomes were the creation of the Section of Indigenous affairs at the *Ministry of Fomento* (1921) and the *Patronato* of Indigenous Race (1922), institutions in charge of reporting the abuses of *hacendados* against the indigenous (Degregori and Sandoval, 2007); however, those institutions and the pro-indigenous legislation were not effective in practice. By 1923 Leguía had lost the initial support of indigenist intellectuals, who passed to the opposition voting against his re-election. After 1923, indigenist governmental action was restricted to manipulative campaigns of pro-indigenous rhetoric, establishing, for example, the 24 of June as the day of the Indian (Wise, 1983).

But the debate on the 'Indian condition' remained present in intellectual circles. A recurrent approach was the conceptualisation of communities as socialist. From a conservative view, Louis Baudin wrote *A Socialist Empire: The Incas of Peru* (1927), in which the economic system of *ayllu* is understood as the foundation of an ancestral tradition of 'practical socialism' that would explain the backwardness of Peruvian culture. In the other ideological spectrum, Valcarcel, Castro-Pozo and especially Mariátegui proposed a revolutionary socialist indigenism (Urrutia, 1992).

Mariátegui's view of the Indian can be grasped in the debate with the Moscow-based Third or Communist International (Comintern) in the First Latin-American Communist Conference (Buenos Aires, June 1929), where it was discussed if peoples' oppression was primarily an issue of class, race, or nationality. The Comintern observed the revolutionary potential of anti-colonial struggles, and following Lenin's and Stalin's theses on national and colonial questions, defended the right of self-determination and secession for national minorities. Thus, they promoted the constitution of 'independent native republics' for Blacks in South Africa and the United States, and for Quechua and Aymara peoples in Latin America. In contrast, Mariátegui, in "*El problema de las razas en América Latina*" argued that the 'Indian Question' was fundamentally one of classes in which the bourgeois oppressed the rural proletarians (Becker, 2006).

For Mariátegui, Comintern's separatist proposal would only increment indigenous poverty and marginalisation because liberating the race without addressing underlying class issues would lead to an Indian bourgeois state as exploitative as the capitalist one. Thus, Mariátegui's solution for Indian liberation was to join workers and others in a struggle for a socialist revolution since the categories of race and class are connected in countries with high cultural diversity: the Indian problem in Latin America was an economic and social issue, specifically an agrarian problem. Nonetheless, instead of

assuming the thesis that Indian problems would be solved through their assimilation into the *mestizo* population, Mariátegui asserted that Indians' struggles for equality did not mean to renounce their identities. They would maintain their identities but the problem they faced had to be understood in classist rather than racial terms, so, they would have a central role in the revolutionary movement (Becker, 2006).

But if Comintern criticised Mariátegui's apparently reductionist view of indigenous struggles as a matter of class, another critique of Mariátegui focused, paradoxically, on the overemphasis of the ethnic aspect (Fuenzalida, 1976) and the homogenisation of the Indian (Degregori and Sandoval, 2007). For Grijalva (2010) Mariátegui's defence of Inca communism responds to a rhetorical necessity of his political project, he therefore describes more his political desire to resist capitalism than a socio-historical reality (Grijalva, 2010). Moreover, Mariátegui's indigenism would mystify Andean communities and racially rejects other ethnic groups such as Chinese and African descendants (Grijalva, 2010). However, Mariátegui emphasised the ethnic aspect because of the necessity of critiquing the strong racism of his epoch against Andean people (Ferrari, 1984) and to reconstruct or re-invent indigenous histories to confront the unilateral official history (Varese and Terrientes, 1982); it never meant an innocent essentialisation or a contradiction with his original idea that the economic aspect was fundamental to indigenous struggles.

Indeed, Mariátegui's famous phrase: 'The Indian problem is the problem of the land' implicitly defined Indians as an agricultural race, namely, as a classist concept, what was reaffirmed in the following decades (1930 - 1960) by the International Left that promoted class as a supra concept that assimilates all races (De la Cadena, 1998). Thus, in the decade 1930 - 1940, Castro-Pozo, founder of the Socialist Party, proclaimed that the *mestizo* should lead the Indians' struggle for land. It was later articulated in a Marxist-Leninist political slogan: "although the peasantry was considered a force, the urban proletariat was its necessary vanguard" (De la Cadena, 1998: p. 156). Unlike José María Arguedas (see 4.4), most intellectuals believed that Indians were "unable to create leadership, because they depended emotionally on the old order", instead, they were becoming '*cholos*' or modern mestizos (Quijano, 1978: p. 148).

After the golden age of indigenism (1920-1930) this one-dimensional view of the Left was accompanied by a period (1931-1942) of Hispanic reaffirmation which emerged in a global context of conservative and fascist movements. In this period, the Peruvian philosopher Alejandro Deustua asserted that Peru's backwardness was due the indigenous race (Degregori and Sandoval, 2007).

In this way, the discourses on indigenous peoples articulated by the political right and the political left contained in their roots racist perspectives that have imposed non-indigenous institutional arrangements on indigenous peoples, and sustained a legal and ontological violence against them, even in the most progressive political context.

6.3.3. From indigenous to peasants: the peasant communities in agrarian and post-agrarian reforms

The legal and ontological violence previously mentioned have accompanied different historical stages in the relation between the state and indigenous peoples, even during the second wave of legal indigenism deployed by the military government of President Velasco (1968 – 1975), who is considered as the proponent of the most important pro-indigenous legislation and institutionality in the last century.

Between 1959 and 1966 newspapers reported 103 invasions to *haciendas* throughout the country and the violent reaction of traditional sectors: peasants were killed and imprisoned (Cotler and Portocarrero, 1976). As older colonial oppressive forms of exploitation survived in the Andes, peasant rebellions, especially those led by Hugo Blanco (leader of the Peasant Federation) in la *Convención* – *Cuzco* promoted the transformation of the land tenure structure through a direct participation of peasants. These invasions were accompanied by workers, students and employees interested in the action (Cotler and Portocarrero, 1976).

In 1963 Blanco and peasant leaders were imprisoned and the organisation was dismantled. Nonetheless, because of the strength of the peasant movement, the *Convención* was chosen by the government to initiate the agrarian reform (Cotler and Portocarrero, 1976). The nationalist emphasis of the agrarian reform, thus, was due to the threat of regional peasant uprisings in the southern and central highlands (Seligmann, 1993).

The future of the community, again, became an issue of public discussion. There were three alternatives: disappearing; reinforcing the system; or structural transformation. Pro-agrarian reformists argued that the first option would lead to the consolidation of *gamonalismo* or *latifundio* in the marginal areas liberated after community's dissolution. The second alternative would maintain the actual defects, among them, the prevalence of self-consumption, the weaknesses of local governments, confusing land tenure systems and the lack of inter-communal coordination. Then, the transformation of the community was considered the best alternative through a process of modernisation (Matos et al, 1976). In this scenario, the first step was to replace the term 'indigenous' which was understood as discriminatory, for the term 'peasants'.

President Velasco implemented the third option through legislation and administrative agencies directed to protect and modernise communities: their traditional internal organisation was changed to a cooperative model (Del Castillo, 1992; Matos et al, 1976). Indeed, the government sought to establish state capitalism, modernisation, and national integration, at the same time as minimising class differences and peasant and worker uprisings. In addition, Velasco's regime imposed its own mode of participatory political organisation in order to eliminate competition from unions, parties, and peasant federations (Seligmann, 1993).

Thus, Velasco enacted the 1969 Agrarian Reform Law and created the 'peasant community'. The new legislation was used by peasants to consolidate or re-establish ancestral local practices and to create production zones (Seligmann, 1993). In 1974, Velasco passed Law 20653 creating the 'native community' for the Amazonian region. The peasant and native communities were protected with the features of old indigenous

communities: inalienability, *imprescriptibilidad* and *inembargabilidad*. Although the reason of this protection, again, was to avoid land loss through fraudulent contracts, the practical effect was the non-recognition of individual or familial property of community members but only the property of the community as legal person. This was not a triumph of protectionism but the result of a lack of dialogue between two worldviews (Del Castillo, 2004). Indeed, the Andean agrarian system is not synonymous with collective property; inside the communities there are diverse forms of tenancy beyond the form individual-collective: *comuneros* (communers) can assert communal tenure and at the same time familial tenure on the same land, contradicting the juridical Western logic of exclusivity of private property. For that reason, it is not adequate to oppose the two kinds of rights (individual and collective) of European matrix. Both of them coexist (with different combinations) in the communitarian space (Miguez, 2010; Del Castillo, 2004).

Indeed, this process of socialisation of the Indian, denied the indigenous ontology and in this way it affected the organisation of indigenous peoples around their ethnic character and their political aspirations. The peasant and his land were understood as an economic unit within the project of national integration and economic modernisation. The assimilation perspective on indigenous rights (section 3.2.2) and the modernisation perspective on development (section 4.2) were reflected in this period.

In spite of the inconsistencies of the legal system, the legal protection established the inalienability of indigenous lands and was beneficial for its defence. However, some years later a post-agrarian reform process of dismantling the legal protection of communities emerged. In 1978 Law 22175 replaced the provisions of Law 20653 and rescinded the ownership over forests and subsurface resources for all native communities subsequently recognised. Moreover, Article 28 subjects native communities to the greater 'social interest' (Stocks, 2005), which justified the exploitation and dispossession of indigenous land. In addition, the 1979 Constitution established two exceptions of inalienability: law founded in community interests claimed by a majority of 2/3 of active members, or in cases of expropriation for 'public need' (Del Castillo, 2004). These legal devices that subjected territorial rights to exceptional situations in which the state could dispossess indigenous peoples (see 3.4.2) were reproduced by the General Law of Peasant Communities of 1987.

The legal protection for indigenous peoples was further weakened during Fujimori's government. The 1993 Constitution, although affirming the ethnic multiplicity of the country, removed the still in force norms in favour of indigenous people contained in the 1974 legislation including the inalienability of indigenous lands, and reasserted the state's absolute control and ownership of natural resources. It generated a considerable increase of extractive concessions (Stocks, 2005; Hughes, 2010; Green, 2006). In addition, Fujimori enacted the Decree N° 653 (*Ley de Promoción de las Inversiones del Sector Agrario* or "*Ley de Tierras*"- Law of Lands) which introduced the agrarian land property, promoting the selling, leasing and mortgage of land, and also credit and forms of entrepreneurship (Del Castillo, 1992, 1997, 2004).

Another institutional innovation in the nineties was the creation of the Special Program of Land Titling and Rural Registry – PETT (1992) inspired in De Soto's ideas on formalisation (see 4.2.4). However, PETT titling interventions on indigenous communal

land generated internal conflicts by titling individual parcels, increasing the differences inside the community (Eguren et al, 2009).

The legal weakening of peasant communities was accompanied by a social process of internal disarticulation, especially from the fifties. In areas close to mining companies, some *comuneros* are at the same time mining workers, becoming cheap labour reserves. In other communities crafting and other product commercialisation are more important activities than agriculture (Matos, 1976). Some argue that Andean communities today have nothing to do with indigenist views of common work and reciprocity (Golte, 1992) and that they are experimenting with sales and leases of their land (Del Castillo, 1992). I examine below these arguments and the internal social, juridical and economic basis of peasant communities today.

According to the last official information provided by the state (Allpa, 2003), there are 5818 peasant communities; the majority are located in the Andes. It is estimated that of 7.5 millions of rural population, 3 millions are *comuneros*. The land occupied represents 40% of agricultural land in the country (Eguren et al, 2009). Andean indigenous communities have three features: control of physical space; communal organisation; preservation of socio-cultural features (Matos, 1976).

To take advantage of parcels distribution, the *comuneros* must be adult active members, be inscribed in the communal registry, and have the right to access communal lands. For the *comuneros* 'to serve the community' is the fulfilment of their obligations considered as contributions to personal and collective benefits (Eguren et al, 2009). However, the relation *comunero* – community is related to the age: the youngest have less rights to land access than the adults and this discourages the youngest to work for the community. That is why some argue that for many *comuneros* "the community is a burden" (Urrutia, 1992: p. 15). This situation is a vicious circle: the young do not work towards land access because the uncertainty of land access disincentives them to take responsibilities (Eguren et al, 2009).

Nonetheless, communal organisations still maintain many important structural elements. In spite of some exceptions, the whole communal land is almost unalienable to non-communers, not because of a legal prohibition (it was derogated by 1993 Constitution) but because it is considered as part of a territory, an element strongly connected to community existence (Eguren et al, 2009). The connection to land is a connection to collective property because it represents a territory. This correspondence is related to comuners' identity. Land defence during 150 years has not only constructed collective rights, it also has generated communal and local identities, communal space is then a 'locus' of identity: a place in which is located the origin of the group and which explains its distinct and specific nature (Diez, 2003).

Indeed, the understanding of communal land as territories responds also to a process of reinvention of territoriality. Damonte (2011) talks about a 'historical productive/extractive arch': in the colonial era, territory was important as space for indigenous grouping for forced labour and taxation; the value on territory as space of indigenous exploitation was displaced towards the value of land as a production factor for capital accumulation during the fifties, sixties and seventies. At the end of the twentieth century, neo-extractivist models in Latin America brought a different violence on indigenous spaces: land of marginal and rural zones of highland lost value as an

agricultural factor, however, material and cultural resources are now available to be appropriated by capital reproduction. Then, it is territory and its resources which acquire value again and there is an emergence of counter-hegemonic narratives that re-structure an indigenous nation through the creation of new territorial units.

In that context, in spite of the use of Western categories such as ‘property’, land is organised by indigenous arrangements inside the territorial space. *Comuneros* admit the property of the community as a means for legal protection, recognising themselves as possessors or users of the parcel they work and owners of the communal land. Then, the community certifies property and rights of each family because for *comuneros* there is no contradiction between possession certificates and property title: both are complementary as means for legal protection (Diez, 2003), and this does not contradict the geopolitical character of the territorial space.

In the Andes, indigenous communities have suffered from different processes of disarticulation of their culture and the economic structure that depends on it (Matos, 1976). However, many of them have maintained their cultural principles and struggle for their self-determination, appropriating liberal legality and moving beyond it with claims that challenge its foundations. Namely, in spite of the legal and ontological violence exerted on them, the imposition of a cooperative or liberal model and the imposition of a non-indigenous identity (as peasant or liberal entrepreneur) in the agrarian and post-agrarian reform contexts, many indigenous peoples in the Andes resist to abandon their indigeneity and all its economic and political features. Amazonian indigenous peoples share similar aspects of this process but they have many particularities related to their specific historical process.

6.4. Legal indigenism and politics in the Amazon

Why did the *Baguazo* occur in the Amazon and not in the Andes? There are three usual explanations: it is because of the ignorance of the Amazonian indigenous manipulated by politicians; it is because of their primitivism and opposition to modernity and development; it is the violent heritage of Awajun and Wampis peoples (Espinosa, 2009). These views on Amazonian indigenous peoples are not new. From colonial times, Amazonian indigenous were constructed as ‘savages’; for example, Guamán Poma or Garcilaso de la Vega presented them as Indian ‘antis’: beings characterised for cruelty, aggressiveness and ferocity (Santos 1992: p. 260 in Espinosa, 2009). These old and new images demonstrate a historical lack of capacity to understand indigenous Amazonian ontologies and the consequent attempts to appropriate indigenous territories (seen as *terra nullius*) and to exclude or violently include the indigenous population.

6.4.1. Native Law and native communities

Amazonian native groups, especially from the Northern Amazon, have had more autonomy than Andean peasant communities, which depended on economic and political arrangements of regional and national colonial centres (Diez, 2003). The Inca Empire never could control the Awajun territory (ODECOFROC, 2009); several Inca emperors tried to conquest Jivarian territory but natives did not have a centralised government to be subjected; they lived in small grouping of semiautonomous households located at several intervals of rivers (Greene, 2009; ITTO, 2007). Similarly to the Andes, during colonial times Amazonian indigenous peoples were subjected to

relocations and grouping, but these processes were not totally dominated by colonial rules as in the Andes, they were led by Jesuit missions, which created some communities of Indians in some areas of the Amazon (Barclay, 2001; Chirif and García Hierro, 2007).¹⁰

Spaniards identified the first gold mines in the region in 1556 and constituted *encomiendas*: by 1571 there were 71 *encomiendas* in the municipality of *Bracamoros-Yahuarzongo*, with a total of 22 270 natives. In 1599, different Jivaro groups promoted a general uprising to expel Spaniards and many zones were completely closed to Spanish presence until the end of colonial epoch. During the XVII century, Spaniards made many attempts to recoup the mines but were repelled by the natives (ODECOFROC, 2009). This permanent resistance continued during the Republic with episodes of expulsion from Jivaro territory of presidential committees that tried to undertake mining extraction.

Indeed, the Awajun are very proud of their history of resistance, as the Awajun leader Santiago Manuin asserts in an interview: *“Our ancestors left us the mission of defending our territory; we have never let anyone take it, the rubber fever was not able to eliminate us, or the Incas, neither terrorism nor the settlers; we have to defend our land for our next generations”* (2011).

The encounters between the Awajun and the state have been marked by a profound legal and ontological violence. During the first years of the Republic, the Peruvian state fostered the colonisation of the Amazon in order to ‘civilise’ primitive indigenous peoples. For the political elites, the huge extension of land in the Amazon was wasted by native peoples. In 1835, the Minister of Government and External Relations, Luciano Cano, stated in a letter: *“Such miserable people possess a vast, rich and productive territory in which the nation might obtain huge advantages”* (Larrabure i Correa, 1905; cited by Espinosa: p. 141).

In October of 1893 the first Law on Immigration and Colonisation which declared that the state protects and fosters immigration was enacted. This is the beginning of Amazon occupation by settlers who expanded their land on native territory (Romero, 1978). Thus, the ‘rubber boom’ (late 1800s–1915) emerged in a context of lack of legal protection for natives. Jivaro resistance was remarkable during this period in which the indigenous Amazonian population was subject to extreme modes of slavery (ODECOFROC, 2009). According to Varese, 80% of the indigenous population of *Putumayo* River was killed, and in *Madre de Dios* many tribes were totally exterminated and others were very close to extinction (Romero, 1978). Many indigenous peoples who today live in voluntary isolation, based their decision on deaths caused by disease and persecution during the rubber boom, events which are still very much alive in their collective memories (Napolitano and Ryan, 2007). In 1904, the Awajun and Wampis sated of *caucheros* abuses, organised well-planned campaigns to kill them and eliminate all their projects (ITTO, 2007).

¹⁰ Indeed, the Church had sporadic presence in Central Amazonian territory during colonial times through the creation of some *reducciones*, but in the North the most active presence just appeared in 1947 with the Linguistic Institute of Summer that, in convention with President Odria, pursued educative and religious labour with Jesuits missions (ITTO, 2007).

Nonetheless, the Leguia government reinforced the project of civilisation into the Amazon in 1909 through the Law 1220 '*Ley General de Tierras de Montaña*' which promoted colonisation on oriental zones, and offered guarantees of stability for agricultural industries and the rubber industry (Romero, 1978). With this law the state was able to transfer native' lands regardless of indigenous populations (it entailed the right to displace, eliminate or exploit natives peoples) (Espinosa, 2009). Native peoples had two choices to face internal colonisation: to abandon their territory looking for other free spaces, or remain there as the landlord's peons (Romero, 1978). In order to alleviate this situation in 1957 the Ministry of Agriculture enacted the Decree N° 3 to protect the lands occupied by natives since time immemorial. The aim of this norm was the gradual integration of natives to the civilised life through the provision of individual property on land. Apart from denying the communitarian indigenous cosmology, this norm did not provide legal security to the possessors and did not impede internal colonisation (Romero, 1978).

This proprietary logic was changed by the Native Law 20653 of 1974. Indeed, when native community's law was being elaborated, the main assessor, the Anthropologist Stefano Varese, promoted a federal system of indigenous nations, but President Velasco did not accept that perspective because he thought that the recognition of indigenous peoples as nations would threaten national integrity (Anonymous interview 4, 23-05-13). The Law recognised only individual native communities, each one an isolated administrative and territorial unit. The legal model of peasant community of the Andes was thus transferred to the Amazon (Chirif and García Hierro, 2007; Espinosa, 2010; Surrallés, 2009) regardless of their different social arrangements. For that reason it is common among activists and intellectuals to assert that the state 'invented' native communities that did not exist before (Greene, 2009).

In that context, the aim of recognising natives and peasant communities was not to relieve indigenous peoples from historical plunder and oppression but to integrate these people into Peruvian society to widen the government's popular base (Surrallés, 2009). Furthermore, Native Law was a means to assure internal colonisation because after titling communities, huge tracts of land remained without 'owners' (land that truly constituted indigenous territory), favouring land-taking by foreign people. That is why from the beginning many called the process of titling as an 'institutionalised dispossession' (Barclay and Santos Granero, 1980: 43-74; Chirif, 1980: 15-24 in Espinosa, 2010: p. 245).

In addition, Jesuit missions in concordance with the Native Communities Law grouped natives' families into small towns instead of promoting an itinerant model based on the rotary use of resources according to native practices. This process was accompanied by the imposition of a foreign religion and denial of indigenous customs (Seitz, 2005).

But the most important evidence that Native Law was incapable to express Amazonian indigenous ontologies is that these societies do not have a concept of property in the Western form. The property limits and titling emerge as a necessity against extractive industries or new direct colonisations (promoted by the state) or 'spontaneous colonisation' generated due to the lack of agricultural land in Andean regions (Espinosa, 2010). Amazonian indigenous peoples use property because of its feature of protection

from all (García Hierro and Surrallés, 2004). But this necessity often distorts the internal reality of the territory.¹¹

Instead of property, Amazonian indigenous peoples organise around the notion of territory, but it has particular characteristics. Indigenous territory instead of being a geometric extension marked by physical points that separates and limits, is the consolidation of a specific and singular set of social networks among the different beings that constitute their environment (García Hierro and Surrallés, 2004). Thus, natives know their territory, although it is not demarked: the limits exist but they are referential, not static, so the territorial governance involves a bunch of rights: those rights of families inside the group and those rights of neighbour groups who share some spaces (Diez, 2003). Similarly to the Andes, specific rights can be distributed in favour of individuals or specific groups, but those rights are never absolute and there are always restrictions provided by the major collective: traditional territory is the point of departure (García Hierro, 2004; Espinosa, 2010). It is evident that for indigenous peoples, territory refers more to a political right than a proprietary civil right.

These features are much embedded in many Amazonian communities. When I asked Awajun natives if they were able to sell their land, their response was definitive: *“it is difficult that the indigenous sell their territory. Where would we go? We don’t want to go to cities, is not our environment.”* (Indigenous interview 5, 08-04-2013); *“we were born here, here is our territory and here we are going to die, you won’t see Awajun forming barriadas”* (Indigenous interview 9, 09-04-13). In fact, for Awajun and Wampis their territory is sacred, they would give their life for it (Indigenous interview 19, 12-04-2013). There are some cases of leasing of land but with very negative results. An indigenous Awajun who knows this problem very well argues that natives from *Altomayo* in Northern Amazon leased their land and now everything is deforested, and people do not have other options than to migrate to cities and ask for charity (Indigenous interview 4, 04-04-2013).

In this context, the arguments of De Soto regarding the benefits of private property rights in the Amazon (see 4.2.4) are generally rejected. Gil Inoach (Indigenous interview 1, 17-10-12) asserts that De Soto’s proposal makes sense in the city but it has a negative aspect for indigenous peoples because they have a different cosmology. He argues that if the proprietary system is applied it would take time to understand the capitalist logic meanwhile those who have economic power such as oil, agribusinesses and other companies, would take advantage. In addition, for Inoach these proposals break the roots of identity, the special relation of the indigenous with their territory and the spirituality, and it would finally lead to the extinction of the indigenous peoples. Similarly, a young indigenous Awajun (Indigenous interview 2, 20-10-2012) argues that indigenous peoples will not escape from poverty when they sell or lease their territory, on the contrary, in this way they would lose their territory and individual and collective well-being.

¹¹For example, in 1970 Awajun *Mamayaque* community had a hunting territory with no titles. Since 2007 there are 5 communal titles and 5 legal persons that claim exclusivity on this territory, creating a crisis of inequity of access and use of resources on a territory better conducted in the past by consuetudinary norms (Chirif and García Hierro, 2007).

Although Amazonian indigenous territorial rights have a different cosmological basis of Native Law and property; indigenous peoples accepted this legal scheme because internal colonisation has been so intense that they urgently needed it to ensure some territorial spaces (Espinosa, 2010). Nonetheless, the creation of individual native communities resulted in Amazonian efforts to build a regional movement to articulate native interests. In fact, unlike Andean organisations which also used the legality to advance their agendas, Amazonian organisations began as an explicitly indigenous ethnic movement (Greene, 2009) that has been consolidated by the titling work made from 1970 and fostered by AIDSEP and other indigenous organisations (Surrallés, 2009). Thus, in spite of the legal weakening of the mentioned post-reform process, indigenous peoples have integrated and adapted Western legality to their institutions for territorial defence (García Hierro and Surrallés, 2004). They have also used International Law strategically for these aims, especially Convention 169 (1989) and the UN Declaration on the Rights of Indigenous Peoples (2009).

However, as the early critics of the Native Law asserted, today this ambiguous process of strategic use of legality remains conflictive: natives claim their rights on vast territories (that they need for survival) and the state seeks to recognise property to reduced and limited spaces (Diez, 2003). Moreover, in the last years the state has established bureaucratic barriers in titling processes (Chirif and García Hierro, 2007). In this context, the main concern is that many territorial achievements could be against the best interests of indigenous peoples if their juridical conquests make them forget the instrumental utility of simple strategic stages in front of a legal system incapable of understanding the indigenous territorial rationality (García Hierro and Surrallés, 2004). Indeed, as discussed in chapter 3, if indigenous struggles use liberal legality for the defence of their territorial rights, in order to escape from coloniality they must also reach other important factors such as the respect of their specific ontology.

6.4.2 Amazonian indigenous ontologies

The ontological and legal violence made visible by the *Baguazo* have very profound roots. For example, Amazonian indigenous peoples were ignored even by those first supporters of indigeneity. Indigenist intellectuals and indigenist legality have focused on Andean indigenous peoples, perhaps because of the country's fascination with Inca legacy (Greene, 2009). Thus, the *Pro-Indigena* Association was active until 1916, the last stage of the rubber fever in the Amazon, however the Association considered that the case was not important because Amazonian natives were not truly citizens integrated into the Peruvian nation (Barclay, 2010). Thus, the inability to understand Amazonian ontologies led early indigenous activists to ignore the rights of these peoples. It is important then to explore the meaning of Amazonian indigenous ontologies.

The discussions around Amazonian ontologies have been developed by the 'New Amazonian anthropology', especially by Descola's animism and Viveiros de Castro's perspectivism. According to Descola (2004), unlike Western dualism between humans and non-humans, Amazonian cosmologies classify a scale of beings in which the differences between men, plants and animals are of degrees and not of nature. The Achuar, for example, argue that the majority of plants and animals have a soul (*wakan*) similar to the human being, a faculty that classifies them among persons (*aents*) with reflexive conscience and intentionality. Thus, the worldview is not of the dominant

species over the others, but one of a kind of transcendental ecosystem conscious of the totality of interactions developed on its basis.

Viveiros de Castro (2004: p. 465) argues that for Amazonian peoples, “the original common condition of both humans and animals is not animality but, rather, humanity”. Thus, Amazonian myths relate how animals which perform key symbolic roles lost the qualities inherited or retained by humans. Then, personhood and ‘perspectivity’ are issues of degree and context rather than features of particular species. All beings perceive the world in the same way, what varies is the world that they see. This view contradicts modern multiculturalist ontologies which assume a unity of nature and multiplicity of cultures; in contrast native conception presumes a spiritual unity and a corporeal diversity: “one culture, multiple natures/ one epistemology, multiple ontologies” (Viveiros de Castro, 2004: p. 472). In this theory, the soul provides the possibility of having a point of view so that those non-humans hold personality because they hold or are spirits. As in a formal way the soul is similar in all beings, it cannot explain the differences between viewpoints, but rather “the difference is given in the specificity of bodies” (Viveiros de Castro, 2004: p. 474).

Looking specifically to the Awajun, Green (2009) finds that the people, certain animals, plants, and meteorological phenomena are all considered *aents* (human), given specific circumstances, and they have soul or *wakan*. The traditional Awajun cosmology also distinguishes between male and female spirits which provide a regulatory framework for economic activities and sexual division of labour: the *Ajutap* male and *Nugkui* female are symbols that condensate the spiritual power of many entities of the Awajun world (Brown, 1984 in Seitz, 2005).

Regarding the political ontology of Jivarian people, it must be noted that for them the word ‘vision’ is fundamental. The visionary act is a process to acquire ‘strength and power’ that allows people to orient their future, acquire capabilities and promote health and success (Belaunde, 2005). The old way to acquire vision is through visionary experiences lived in dreams or in trances produced by the ingestion of potions based on snuff or other psychoactive plants such as *Ayahuasca* (*Banisteriopsis caapi*) and *datura* (*Datura arborea*). Today there are new forms to acquire vision, for example young seek their visions in waterfalls for purification baths (Belaunde, 2005; ODECOFROC, 2009).

The ‘vision’ is an individual power, but it seems also a collective strength. An Awajun teacher and activist (Indigenous interview 9, 09-04-13) says: “before the arrival of Spaniards we had *tajimak pujul*, we had a *vision* of development, but it was not a vision of destroying the environment, the other way around. We want to rescue this, our ancestors had their *tajimak*, they lived with the land and resources, and they didn’t drill the land... that is our aim, on that basis we want to prepare our people so they are able to develop without destroying the environment”.

For Gil Inoach (Indigenous interview 1, 17-10-12), indigenous vision does not mean a return to nudity; indigenous vision is to provide additives that fortify the cultural system of indigenous peoples and fortify their cosmology by integrating the good things of globalisation. But for him the first condition of everything is that indigenous peoples must have a territory, the fundamental principles must be respected: territoriality, self-government, and the spiritual dimension between indigenous and nature.

Indeed, the Awajun connect this collective vision with the respect for their territory. Barclay and Santos (2010) found that Awajun are creating new stories that explain the rejection and distrust of foreigners who entered into their territory, such as state employees or company representatives. Natives see them as competitors for their resources, that is why Santos talks about a 'political economy of life', namely, economies in which from the point of view of social actors, the most scarce resource are their own forces of life. According to this cosmology, the vital force that animates the world is finite and scarce, in constant circulation and unequally distributed; because this substance animates all existent beings and is scarce, the growing of a living being only can be do at expenses of another. This means that all beings are involved in a constant struggle for accumulate enough vital strength to guarantee their survival and reproduction. What avoids the anarchic destruction among species is that all are perceived as 'persons' and have the right to live, so all aggression would be responded with a new aggression. This results in an ethic of self-regulation, that ensures a natural balance (Barclay and Santos, 2010).

A practical result of this cosmology is the strong conservationist approach in Awajun discourses. An Awajun teacher (Indigenous interview 15, 10-04-2013) asserts that Awajun are conservationists because they feel to be part of nature, human beings communicate with nature because water, land and cosmic space have special relations with people and for that reason invisible beings of nature are approached by the drinking of *Ayahuasca*. Another Awajun (Indigenous interview 24, 14-04-13) asserts: "this piece of land that exists in the Amazon has been our habitat since before the Republic; indigenous have lived here in harmony with nature. For us nature is our mother earth, without forest, water, hills, the indigenous is nothing, he has no culture. And nature has its spirit, it has its mother, river has its spirit, it has its mother that is *sunki*. The same with hills, this is the strength of indigenous peoples".

The Awajun say constantly that the forest is a space which provides what is necessary to live: food, water, medicines and shelter. For the Awajun the value of nature and their special relation with spiritual beings is clear. However, today they acknowledge that material constraints have affected their cosmology. An Awajun is the teacher of a state program of intercultural education in which the '*buen vivir*' is an essential part of the curriculum, '*buen vivir*' understood as indigenous well-being (respect for territory, language, and customs); however, he admits that this program seeks the adaptation and integration of indigenous peoples to a national culture (Indigenous interview 15, 10-04-2013). Another Awajun teacher of the same program, (Indigenous interview 14, 10-04-2013), asserts that the indigenous cosmology and '*buen vivir*' is today a discursive form because things have changed in reality, the form of interrelating with spiritual beings has remained only in theory; however, some features are maintained: respect of the forest, territory and water are elements that still exist.

Basic needs and the necessity of money are deepening this process of acculturation. For the first woman Awajun President of an indigenous regional organisation, territorial defence is important, but the promotion of production chains is also relevant, in fact, her main concern is how they can find markets for their products (Indigenous interview 11, 09-04-13). For many Awajun 'development' means to improve their living condition through the commercialisation of their few products such as cacao, bananas and *yuca*. Indeed, Awajun people are each day more immersed in a market economy in which they participate as providers of agricultural products under unfavourable conditions because

mestizos merchants have the absolute monopoly on the prices (Seitz, 2005). And today many young indigenous prefer to work for companies, being merchants or studying at universities instead of doing hunting, gathering and *chamanism* as their grandfathers (Seitz, 2005).

An Awajun-*mestizo* who occupied an important local public position during the *Baguazo* argues that Awajun people are more interested in commercialising their products rather than in old indigenous claims because old organisations have represented them for many years without obtaining benefits: *“NGOs of human rights and gender equality have arrived and that is good, but what about of the right of not being hungry?”* (Indigenous interview 18, 12-04-2013). He says that natives are not using more traditional forms of hunting and fishing that were intrinsically ecological, that they are using dynamite because there is more population and they urgently need goods to avoid hunger, even without considering environmental impacts. This is the reason why many indigenous have many concerns with anthropologists, he asserts that anthropologists have arrived and say *“see the native, let him living happy with his forest”*, but he emphasises that the natives have to study and must have access to health services, and these public services have a cost (Indigenous interview 18, 12-04-2013). An Awajun activist similarly argues *“where are the anthropologists that explain that in indigenous communities there is an actual modernity? I would like to meet anthropologists that explain how indigenous are modernising”* (Indigenous interview 23, 14-04-13).

One of those interviewed is what we could call an ‘expert’ Awajun. He holds a master degree and doctoral studies in environmental management, and expresses the maximum point of a modernist indigenous perspective. For him the term *tajimak* means a man who has ‘vision’: a house, family, animals, good living conditions and today he would be an entrepreneur. He argues that today there are two opposing visions: one pessimistic, frightened, and the other optimistic with no fears of the other and of taking advantage of modern cultures: *“there is one vision that totally rejects extractive activities, it is very radical... but there is another group which has decided to work with the company, then, how you can act against them? We must respect them and in the process we will see, it is good also that people try because if they don’t try, they won’t obtain a result, they are as a child, we must let them fall”* (Indigenous interview 25, 14-04-13).

Another Awajun ‘expert’ has a very different position (Indigenous interview 27, 15-04-13); he holds bachelor degree and postgraduates studies in physics and is developing projects of fishing farms and modern techniques of cultivation. He argues that his goal is to adapt globalisation and technology to his people’s reality (not the other way around) in order to find alternatives to extractive industries, so their people can maintain their territoriality and traditional cultural and legal system with modern technology: *“we are promoting the academic and professional preparation of more young people in order that they learn how we can defend our territories”*.

A young Awajun writer (Indigenous interview 3, 04-04-2013) explains the tensions between these different views: *“what happens is that for Awajun and Wampis it is no longer easy to access forest resources, they cannot just live from gathering and hunting, many of them have entered into the market system, so there are cases in which they lease their land or they want to sell it, but they cannot because they have the collective*

system... in few cases they leased the land but they received very little money, in the end these tensions generate conflicts inside organisations and groups... It is a conflict with no resolution between those who want to maintain their collective system and those who want to enter into the market". In this sense, Seitz (2005) talks about a 'generational rupture' as a meaningful loss of familiarity with ancestral knowledge due to internal and external factors, the first one is basically the depletion of natural resources because of an increment in population; external factors refer to foreign cultural influence that modifies pattern of conduct and attitudes of individuals, the most important are the evangelic Church, the internal colonisation policies, schools and the market.

Indeed, in a context in which the resources of the forests are being diminished because of economic pressures it is clear that indigenous peoples cannot maintain the purity of their customs and traditions. They need to use the economy, the legal and the political systems to survive and in this process the tensions and conflicts among them are unavoidable.

Green (2009) argues that these tensions express what he calls 'customizing indigeneity'. For him the two extremes of customising land rights that occur with Awajun (total rejection of state and market mechanisms/ total acceptance of capitalism) must be seen as forms of active negotiation with the state and the market, articulated through the native community. Rather than interpret them as oppositions, these are the diverse paths on which Awajun construct their different projects to customize indigeneity (Greene, 2009).

Indeed, the existence of contrasting visions inside Awajun politics must not lead us to conclude that a certain plurality of indigenous politics entails a renunciation of indigenous principles. Themes such as self-determination, territoriality and a strong environmental concern still are crucial in the general indigenous agenda. Most discussions are not directed to deny those principles but to define if the engagement with the capitalist political economy and liberal legality would end up (or not) affecting them. In any case, there is a different ontology within the Awajun, which is strongly connected to the idea of collective autonomy that has been denied by the legal and ontological violence exerted since colonial times. In the next section, I discuss the way in which Amazonian indigenous peoples have reacted to confront this violence.

6.4.3. Amazonian political articulations

The institutional and ontological violence observed in the *Baguazo* appeared in different political projects during the Republic. However, the indigenous political articulation against this violence is located in the formation of indigenous organisations from the mid of the last century.

In the sixties President Belaunde promoted the most cynical project of internal colonisation, his plan (and later book): *La Conquista del Peru por los peruanos* (*The conquest of Peru by Peruvians*) expresses "the elite desire to finish the project of civilisation by extending it to Peruvian Amazonia, where it had never been fully realised" (Greene, 2009: p. 138). The Plan viewed the Amazon as "lands without men for men without lands" (Trapnell, 1982; cited by Espinosa, 2009: p. 143), so it sought to construct a highway to connect the region from South to North, to diffuse the

conservative civilisation ideology and at the same time to reconstruct and reduce the physical space of indigenous peoples (Chirif and García Hierro, 2007).

This neo-colonial project generated the displacements of many indigenous peoples, but some of them defended their territory with bows and arrows. Thus, the Matsés in the Amazon of *Requena* attacked a government commission in 1964 and the government responded by bombing the Matsés territory with napalm (Erikson 1994, cited by Espinosa, 2009). It was clear that bows and arrows were not sufficient means to repeal an invasion in the mid XX century, so this event obliged indigenous peoples to change their mechanism of struggle. Since then, the Amazonian indigenous claims have been channelled through the creation of political organisations (Espinosa, 2009; Davis and Wali, 1994).

By that time, international indigenous movements were emerging in other places of Latin America, influenced by two foreign social movements: Black movements in the U.S., the Caribbean and parts of Africa, and the American Indian movements founded by Indians who lived in marginal towns in the U.S. (Smith, 2003). From then, Smith (2003) identifies three different international movements in Latin America: An Indian movement consolidated with the creation of the Indian Council of South America (CISA) in 1980, lead by the Bolivian *Movimiento Indio Tupac Katari*; Ethnic Federations that emerged in the seventies in areas where indigenous peoples with a strong feeling of ethnic identity lived (in the Central Andes of Colombia, South of Chile and Bolivia; the Orinoco and Amazon basin, the Ecuadorian Andes and the Gran Chaco); and Peasant unions promoted by Left parties from the fifties.

A notable example of an ethnic movement in Peru was The *Consejo Aguaruna-Wambisa*, born in 1977 in the native community *Mamayaque* (near to Cenepa River). The *Consejo* sought to institutionalise a Jivarian organisation led by the Awajun leader Evaristo Nugkuag (Greene, 2009). This organisation (and others similar) was established to defend indigenous territories against the expansion of settlers, cattlemen, lumber and oil companies (Rénique, 2009).

Peruvian anthropologists who supported the movement founded their own organisation: the *Centro de Investigaciones y Promoción Amazónica* (CIPA). CIPA had connections to foreign organisations and universities, so it provided not only consultancy but also funds to native organisations. However, for indigenous peoples the emerging structure of international indigenous activism through NGOs and universities networks reflected a pattern of dependency. To achieve more autonomy from non-indigenous friends, the Amazonian indigenous people created AIDESEP. Since the eighties CIPA and AIDESEP started to compete for international funding (Greene, 2009).

AIDESEP became the most important indigenous organisation in Peru with national, regional and local presence (see 5.2.2). The competing Amazonian indigenous organisation is the Confederation of Amazonian Nationalities (CONAP) which emerged with a different orientation by accepting social and economic integration within national structures, and extractive activities, parcelling of land, massive use of Spanish and other similar issues (Chirif and García Hierro, 2007).

Since its creation, AIDESEP has played an important role in international advocacy initiatives on both environmental and indigenous issues. It was one of the founder

members of the Coordinator of Indigenous Organisations of the Amazonian Basin (COICA) formed by organisations from the eight Amazon basin countries in 1984. AIDSEP and COICA have been effective in raising international awareness about the connection between indigenous and environmental issues and have helped to place indigenous issues on the agenda of important international organisations as the ILO, UN, World Bank and IDB (Hughes, 2010; Davis and Wali, 1994).

In spite of this success, indigenous movements in Peru are usually characterised as weak unlike such movements in Bolivia and Ecuador (Green, 2006). The main reasons for this situation are: 1) the Marxist government policies of the late sixties and seventies which organised highland populations with class-based labels (identifying them as peasants, not as indigenous); and 2) The political violence, repression, and persecution on the part of both the state and the terrorist group *Sendero Luminoso* (García, 2003; Lee, 2010; Green, 2006; Seligmann, 1993). But these explanations only focus on Andean indigenous peoples. Green has correctly asserted that Amazonian indigeneity has been ignored even when Amazonians propose openly ethnic politics. Thus, the Peruvian Amazon is triply marginalised: “Marginal to the Peruvian Andes, which is marginal to the Peruvian coast, which is marginal to the great world power of the north” (Green, 2006: p. 338).

In fact, Amazonian indigenous organisations have been articulating coherent political claims in the last decades, related to titling of communal land and recognition of reserves for indigenous in voluntary isolation, amongst others. However, within this process have appeared many problems, even situations of crisis derived from internal factors (lack of efficient administration and institutionality; lack of coordination between local, regional and national offices; different views on the political agenda; personalist leadership and corruption) and external factors (economic division by companies; government policies or strategies to weaken the organisations; introduction of foreign social codes of conducts by migrants, NGOs and the Church). These problems have been identified by activists and the indigenous peoples.

According to Alberto Chirif and Diego García (2007), two early supporters of the Amazonian indigenous movement, these crises occur because of the weaknesses of internal relations between national, regional and local political leadership, and lack of strategic vision to take advantage of the opportunities that the system offers. According to them, the first problem emerges because the actors are involved in different realities. National and regional actors easily reproduce an image of how the indigenous must be or ‘good indigenous’ fostered by nationals and foreign activists looking for alternatives to world crisis. However, the dynamics of the locals are different since they are the most affected by companies and market actors: they have been divided by the creation of ghost organisations funded by companies, and inside the communities daily life is often altered by prostitution, alcoholism, drug consumption, etc. brought by foreign people (Chirif and García Hierro, 2007).

Another founder of the movement, Richard Smith (Smith, 2003), highlights other important problems, such as the strong personalism of indigenous organisations and the lack of institutionality. According to him these issues led to situations in which some leaders (influenced by international conference invitations, meetings with authorities and so forth) act as traditional politicians led by material interests. Besides, the change of presidencies take place in a deficient administrative context with no historical

archives and no permanent institutional members, which makes it difficult to maintain a vision, strategy and working plans for long periods.

Another important issue is that indigenous communities have their own internal conflicts. There are tensions between hierarchical and egalitarian models of leadership, and periodic questioning of traditional rituals and political systems (Brown, 1991).

During my fieldwork I found that indigenous peoples admit some of these problems. For example, some of them argue that the crisis of indigenous organisations is because some leaders have internalised the economic logic, and use politics for their economic benefits. So today in the communities many people don't consider them as leaders but as liars and robbers (Indigenous interview 3, 04-04-2013; Indigenous interview 17, 11-04-2013). In that sense, it is said that the leaders have learnt Western life and then just seek money and divisions (Indigenous interview 16, 11-04-2013); "some indigenous leaders behave as Western people" (Indigenous interview 26, 14-04-13).

This perception has been deepened by a Convention signed between Petrobras and AIDASEP, which has been strongly criticised by indigenous peoples (Servindi, 2012) and historical activists (Chirif, 2012). A young Awajun writer (Indigenous interview 3, 04-04-2013) says that is not possible to talk of *Buen Vivir* when you agree with an extractive company that you cannot claim judicially against it if they pollute your territory¹². AIDASEP is also criticised because according to Gil Inoach (Indigenous interview 1, 17-10-12) it has changed the movement's vision for another vision that is not collective. He argues that the first mobilisation of August 2008 had a vision because the people protested for the respect of their rights, but the second mobilisation of April 2009 was used for the political aims of AIDASEP president, who wanted popularity to run in the national presidential contest.

Apart from the problems originating inside the organisation, indigenous peoples identify problems originating in governments and companies. Most of them agree that many organisational crises emerge because companies give monthly stipends to indigenous who accept the money because of their poor situation. Thus, companies divide the group producing strong confrontations inside the community: "it is economic power that divides the people" (Indigenous interview 9, 09-04-13).

But political power also divides the people. An important Awajun leader (Indigenous interview 7, 08-04-13) argues that sometimes the government promotes fake organisations to destabilise the movement. According to many indigenous interviewed this practice has been recently used by the '*Coordinadora Awajun*', an organisation created by President Garcia in order to 'incentivise' the companies' view inside the communities. In general, according to the historical activist Diego Garcia (Activist interview 12, 12-06-13), the main problem of indigenous political aims is the

¹²According to a high functionary of AIDASEP (Indigenous interview 30, 26-04-13), the period in which the convention was in force has finished and during that time AIDASEP did not negotiate the rights of indigenous peoples. The functionary also said that perhaps it would have been better not to sign the convention, but it was a political decision of the Directive Council and they assured that the agreement was directed only to organise some events with NGOs.

appearance of many organisations that break the unity of the movement as a fundamental strategy.

The fracture inside the indigenous organisation can be observed in the case of ORPIAN. ORPIAN is a regional committee of AIDESEP but there are two secretaries that claim leadership of this committee. On the one hand, Francisco Shajian, a historical leader, accuses the official leader Edwin Montenegro of corruption. Shajian argues that Montenegro wants to remain in charge to take advantage of it as a Western politician. He emphasises the necessity of ‘negotiations’ and ‘coordination’ with the state, not confrontation. He also emphasises the necessity to implement production chains and companies networks. Edwin Montenegro, on the contrary, argues that Shajian has usurped his position and is supported by oil companies. One can observe two main narratives of the reasons for these problems: individual corruption on the one hand, and company support on the other; and these two narratives are exposed by two contrasting visions around Amazonian indigenous identities: radical denial of extractive industries and acceptance of some extractive industries.

However, as explained by a state official in charge of indigenous affairs, the tensions and dis-articulations inside indigenous movements must not lead us to conclude that there is no valuable indigenous politics, since in any society there are political tensions and dis-articulations: *“we cannot blame indigenous peoples for not having clear representatives because it is also the case in the national society... If you see the political parties, any of them seem to properly exert political representation”* (State official interview 8, 13-06-2013).

It is important to ask if these contrasting narratives are denying the possibilities of indigenous self-determination and territorial rights. What it is interesting to note is that the two competing indigenous organisations (AIDESEP and CONAP) and the two committees which struggle for the regional AIDESEP office equally defend the idea of self-determination and territorial rights. For instance, even though CONAP is usually seen as containing contradictory aims and principles in relation to AIDESEP, in its Declaration of Principles (1997) asserts that *“due to our fighting spirit and self-determination we decide to undertake a process of vindication of our lands and natural resources...”* In addition, almost all the Awajun interviewed emphasise the respect of these rights. Then, the possibilities of assimilation or negation of extractivist activities inside indigenous organisations is indeed a question of degree and negotiation in the context of a primary right of self-determination and territoriality and respect of the indigenous ontology. These aspects are indeed located at the basis of the indigenous movements and have been denied by the ontological and institutional/legal violence uncovered dramatically by the *Baguazo*, but in force since colonial times.

6.6. Conclusions

This chapter has constantly related the past and the present in order to show how the *Baguazo* and, in general, the indigenous struggles embody a history of violence in which policies, politics and discourses directed to exclude or include indigenous peoples are reproduced, deployed, normalised and contested by indigenous peoples’ activism.

In that context, the *Baguazo* cannot be explained only by the unconstitutional decrees which affected indigenous’ territorial rights, or the reduction - in favour of mining

companies - of a national park area that had been agreed with indigenous peoples, or in general, the aggressive intrusion of neoliberalism in the Amazon. The *Baguazo* is the result of a history of violence that becomes periodically visible, but is always latently evolving.

This history of violence is rooted in the expansion of liberal capitalism since colonisation. From then, indigenous peoples' relations with law and economy have been conflictive. First of all, because the law and economy implemented has always been a Western imposition over non-Western social arrangements. Second, because even when this Western model recognised some indigenous rights, this recognition has been based on the Western rationality. This is the case of the legal recognition of the community and property for indigenous peoples.

In the Andes this economic expansion and legal imposition have been more aggressive than in the Amazon, where indigenous groups have lived in more autonomous spaces. Nonetheless, the Andean legal structure has been transferred to the Amazon regardless of the different Amazonian social patterns and historical processes. In spite of this defective legal framework, indigenous organisations have appropriated property and other liberal rights to defend strategically their territory.

In this complex process of inclusion/exclusion of indigenous peoples - rejection/appropriation of liberal legality; indigenous identities have been decomposed and recomposed, and the community has become a locus of negotiation of these identities. In that context, Marxist indigenism, conservative indigenism and state indigenism have provided their own view of what the indigenous must be, discussing their future as a collective or as individuals, and focusing only on the Andes, ignoring Amazonian indigenous peoples.

Nonetheless, Amazonian indigenous peoples and in particular the Awajun, propose an indigenous politics of self-determination based on their rich cosmology that must be grasped with attention to its particularities. This indigenous politics is not uniform. It presents two visions or utopian projects of rejection and coexistence with extractive industries which are conflicting nowadays and which express different degrees of political and economic aspirations and negotiations. The confrontations regarding these visions can explain some periodic crises of indigenous organisations, but it does not deny indigenous self-determination because this principle has not been questioned by the different Awajun perspectives. Indeed, it has been the state through its project of inclusion/exclusion which has imposed a whole ontological and legal violence over indigenous peoples.

Chapter 7: Indigenous rights and the conflictive transition toward an intercultural state

7.1. Introduction

In this chapter I analyse the legal and political consequences of the *Baguazo*: the emergence of a new legal indigenism and indigenous institutionality, and the contradictions that it produces within a context of an extractivist economy. The general aim of this chapter is to explore the tensions and contradictions between the new indigenous legality and the neo-extractivist policies.

In the first part I focus on the new legal indigenism by critically analysing the rationale of the Consultation Law vis-à-vis what I call foundational rights, such as self-determination and territoriality. I explore the content and extension of self-determination in extractivist contexts and the problem of the ‘national interest’ as an exception to justify the exploitation of indigenous territories.

Then, in the second part, I investigate the relation between extractive policies and social conflicts. I analyse the rise of social conflicts in relation to extractivist legal violence in different settings and the way social conflicts have been grasped with different patterns and theories. In particular, I evaluate different theories which explain the reasons for social conflicts in ill designed policies for rent redistribution and formal political representation.

Finally, in the third part, I focus on the recent policies for extractivist promotion and their contradictions to indigenous rights. I analyse the structural and ideological constraints on intercultural policies shown by state officials and how those constraints produce deep tensions in the process of interculturalisation of the state.

7.2. The coloniality of the new legal indigenism

The Consultation Law and the new legal institutions constitute a new legal indigenism because as in the past indigenous peoples’ rights recognition has become the centre of the political agenda. However, as before, coloniality is still in force because these legal devices rely on the idea of indigenous rights’ inclusion through participatory mechanisms into the logic of the liberal and capitalist state. It entails, in the end, that all indigenous aspirations are subjected to the ‘national interest’.

7.2.1. *Baguazo*’s legal consequence: Prior Consultation Law

After the *Baguazo*, a social consensus about the necessity of intercultural policies, directed not only to ‘include’ indigenous peoples but to recognise and value their different culture and, in this way, to reduce social conflicts emerged in Peru (Sevillano, 2010). A Consultation Law was the legal mechanism thought to be able to achieve these aims, a norm based on the ILO Convention 169 to consult indigenous peoples before approving any administrative or legal norm that can affect their collective rights.

The approbation of this Law was delayed during the last year of President Garcia’s government. Ollanta Humala became president in 2011 with the ‘social inclusion’

banner, and the Consultation Law was one of his first measures approved. The Congress passed the Law unanimously and President Humala promulgated it symbolically in Bagua. The Consultation Law (Law N° 29785, September 2011) is the first of this kind in Latin America; it was welcomed by politicians, international organisations, civil society organisations and even the business sector. This was the beginning of a new wave of legal indigenism given the attention and importance of the Consultation Law and indigenous legal and institutional devices recently approved.

The original optimism about the Law, however, was quickly abandoned. Its process of implementation through a regulation (*Reglamento* of the Law N° 29785 of April 2012) was strongly criticised because it established rules that would render superfluous the rights recognised by the Law, and as a consequence it had no support of AIDSESEP (Gamboa and Snoeck, 2012).

It is true that the regulation has many defects, but even the Law has polemical norms: first of all, it does not recognise comprehensively ‘the right of consent’ (as in the UN Declaration), and it does establish a restrictive definition of the category of ‘indigenous’ (more limited than the ILO Convention 169). With these premises, the regulation deepened the problems. The main criticisms are:

- There is a continuous emphasis on the necessity of ‘direct transgression’¹³ on indigenous collective rights as a requirement to undertake consultation, what can be used to limit indigenous peoples’ rights by asserting that the transgression of those rights is merely ‘indirect’. The Declaration does not mention the necessity of ‘direct transgression’ and the Convention does not have that emphasis.
- There are very polemical cases of exoneration of consultation processes, such as the construction and maintenance of infrastructure to provide health, education and in general ‘public services’ (Fifteenth Final Disposition). This norm is very dangerous because it can exonerate from consultation any development project that usually produces major impacts on the indigenous population.
- There is no proper recognition of the right to consent. The regulation only recognises two cases in which the consent of the indigenous peoples is necessary (Seventh Final Disposition): when the state seeks to displace them to other territories (according to ILO Convention 169), and when dangerous materials are attempted to be kept in indigenous land (according to the UN Declaration). The necessity of consent in projects that would produce ‘major impacts on large part of the territory’ established by the Inter- American Court of Human Rights in the Case Saramaka is not included.
- The Second Final Disposition established that all legal and administrative measures previously enacted without a consultation process, maintain their validity. For ILO experts (2013) and activists (Activist interview 5, 02-04-13; Activist interview 1, 9-10-

¹³ The Methodical Guidelines of Consultation with Indigenous Peoples (approved by the Ministry of Culture in April 2013) establishes that the authority can consider that this ‘direct transgression’ occurs when the normative proposal can generate relevant and direct changes in the juridical situation of indigenous peoples, and in their living conditions, cultural identity and development. The Guidelines mention as examples: changes in the models of intercultural bilingual education, regulations regarding the indigenous jurisdiction, total or partial limitations to indigenous collective property and modifications to the conditions of traditional use and access to natural resources.

2012), the measures approved after 1995 (date in which Convention 169 entered into force), should be reviewed and consulted.

The conclusion is that the regulation is not adapted to international standards and it does not properly protect indigenous interests, or even worse, it solely instrumentalises indigenous rights in order to facilitate investments (Gamboa and Snoeck, 2012).

These critiques are common among NGOs; indeed, instead of academia, the massive intellectual production on Consultation Law is developed by NGOs, who are more interested in generating social impacts rather than deeply reflecting on fundamental questions. Thus, NGOs like *Derecho, Ambiente y Recursos Naturales* - DAR (2012), *Instituto de Defensa Legal* - IDL (2011), *Comisión de Derechos Humanos* - COMISEDH (2012), *Sociedad Peruana de Eco-Desarrollo* - SPDE (2011), and others have published manuals on 'Consultation Law'. Many of these NGOs which originally focused on human rights (in the eighties and nineties) and environment (in the nineties) have reinvented themselves to address indigenous issues. The problem is that the analysis applied is limited to a description of what has been established by the ILO Convention 169 and the Inter-American Court of Human Rights, without observing the roots of indigenous rights and its relation to coloniality. Indeed, International Law is constantly re-constructed by struggles for rights' recognition, so it is more important to analyse critically the social trends, the discourses and the emancipatory potentials of human rights than describing what the current state of affairs is.

For instance, a high functionary of Afrodita mine in Northern Amazon argues that Afrodita obtained mining concessions in 1993, before ILO Convention 169 was ratified by the Peruvian state; therefore, consultation was not a requirement for mining activities in this very ecologically sensitive area (Company representative interview 3, 21-05-13). Although legal activists (Ruiz, 2012) have promoted audacious legal interpretations to address this issue, from a legalistic view, indeed, there would be no right of consultation in this case. From a broader analysis of the implications of International Law and Human Rights, the right to self-determination cannot be ignored and recognised uniquely by a legislative act. It is an inherent right of a people.

Thus, it is a mistake to focus on consultation as a key element of indigenous legality and its political agenda. Even more, a profound analysis on Consultation Law and its regulation would lead us to question its very rationality. Let's start by observing the structure of the consultation process. It is a process of 'dialogue' between the state and the peoples (with no intervention of companies); it is led by the public entity that enacted a Law or administrative norm (including licenses for extractive activities) that would affect indigenous collective rights. Then, the process may have 6 stages (arts. 14 – 23 of the Regulation): identification (of the people affected and the norm enacted); publicity (of the norm); information (the state informs about the measure to indigenous peoples); internal evaluation (the community will evaluate the convenience of the measure); intercultural dialogue (which emerges only if there is no agreement after the internal evaluation); and decision (in case of non-agreement the final decision is made by the state). This process has a very short duration: 120 days.

As can be observed, the whole process is designed as a mechanism to inform and convince indigenous peoples of a decision already made by the state; the 'intercultural dialogue' only appears if indigenous peoples are not persuaded. But should it not be the

other way around? An intercultural dialogue should be the first stage in a state really respectful of indigenous peoples, in order to identify the priorities of indigenous populations regarding their needs and aspirations.

This rationale is rooted in the colonial character of Western legality and the capitalist economy. Capitalist expansion needs time and the reduction of any barrier to investment, and social conflict is a barrier. The hope of some private actors (within and outside the state) was to institutionalise the conflicts within the Consultation Law, and through this process - of informing and persuading – legitimise the policy: “If properly obtained previous consent should allow large extractive industry projects to go forward in a less conflicted atmosphere” (Laplante and Spears, 2008: p. 71). In sum, the Consultation Law and its regulation is aimed at freezing indigenous politics into new extractivist policies.

In addition, the expectations and propaganda raised by the Consultation Law make us forget other important rights that have been historically part of indigenous peoples’ agenda, such as territoriality. As the activist Diego Garcia (Activist interview 12, 12-06-13) asserts, nobody is thinking of consultation as an act of self-determination or even as a proper indigenous right, but as a means of not addressing serious issues.

7.2.2. Prior to Prior Consultation: territoriality vs. coloniality

According to Salmon (2013), currently, indigenous communities not only demand free, prior, and informed consultation, but also claim the recognition of territorialities and informed consent. This affirmation is incorrect because the struggle for territorialities and consent is not a ‘current’ claim, but a historical one. Academics and activists tend to conceptualise indigenous rights around the right of consultation, so other rights are just emerging rights that someday would be recognised by the Law.

Territorial rights and prior consent are foundational rights for indigenous peoples because they are connected to their self-determination, the original indigenous right. Indigenous peoples, as has been shown before, have lived in autonomy in relation to Western modernity, capitalism and liberalism before colonisation. The indigenous legality (each one with their particularities) recognised territorial rights for indigenous nations, collective and individual land use rights, and a whole system of rights and duties that Western legality attempted to destroy or invisibilise (see section 3.2). In the process, different peoples have maintained different degrees of autonomy, from peoples in voluntary isolation to peoples in process of complete assimilation to Western logics. However, those peoples who have maintained some fundamental principles of social organisation and their idiosyncrasy as ‘peoples’ still struggle for the maintenance of their foundational rights.

Therefore, self-determination is a principle and right for indigenous peoples, and is not a cultural, fundamental or human right (all of them elaborated in Western terms as constitutional rights or liberal rights recognised by the Constitution) but a *foundational right* in the sense that it is the basis of a whole legal, political and economic system rooted in non-Western ontologies and epistemologies. That is why I conceive this right as the ‘right to have communal rights’ beyond Western thinking (see 3.4.3). Self-determination and territoriality as foundational rights support the right of consent, the

right to use and obtain direct benefits from the land among others rights that contrast with new indigenous rights recognised in the last decades by international standards.

Indeed, many of these new rights respond to Western logics: the right of consultation (arts. 6 .1; 6.2; 15.2 of ILO Convention 169), for example, relies on the premise that a state is going to affect indigenous self-determination and it needs at least to ask indigenous peoples their opinion; the right of indigenous peoples to participate in economic benefits obtained by extractive industries (art. 15.2 of ILO Convention 169) respond to the fact that companies are exploiting (or are going to exploit) indigenous land and resources.

It does not mean that there is not some recognition of foundational rights at international level (indeed, in a very general way, the ILO Convention 169 recognises the right to territory and the UN Declaration the right of self-determination); or that many indigenous peoples, because of their historical process, are closer to the discourse and practice of the new rights (such as consultation and economic benefits); but that the problem of coloniality is still alive and hidden behind an optimistic discourse of indigenous rights' globalisation.

This situation generates practical consequences. After the enactment of the Consultation Law, the Peruvian government had to decide which would be the first process of consultation. The communities of the Quichua of Pastaza were elected as the first communities to be consulted because they had suffered for decades from environmental impacts and the media recently had publicised their situation. The consultation was planned over the commencement of exploitation activities of the oil concession 1AB located close to the communities. The Quichua of Pastaza, however, argued that before any process of consultation they wanted the recognition of their territorial rights and the remediation of sixty years of environmental impacts on their territory. The government had, firstly, to delay the process of consultation, and then renounce the implementation of the process.

This example shows how new rights such as 'consultation' are confronted with foundational rights, such as territoriality. And governmental officials are conscious of this problem. One of them asserted (State official interview 8, 13-06-2013): *"When I meet up with different communities, the three problems that always emerge are: territory, health and education, consultation never appears. They are not interested in consultation; it is not a priority issue"*.

The problem of focusing on consultation is that it can obscure foundational rights which are components of today's indigenous agenda. AIDSEP and the Institute of the Common Good (*Instituto del Bien Comun* - IBC), for instance, are promoting the notion of 'integral territory'. One of the experts of the IBC is an Awajun who has developed a technical theory of this concept. According to him (Indigenous interview 4, 04-04-2013), the problem is that native communities titling covers small parcels in which they live (as in the Andes) without taking into account the whole territory that includes spaces for fishing, hunting and collection. Then, huge areas become 'free spaces' available for extractive activities without the necessity of consultation. To face this problem, communities claim the extension of their titled land or they try to create new communities, but both of them are very bureaucratic processes. This problem can be overcome by titling indigenous peoples' territorial habitats instead of specific plots.

National and international legal standards do not completely protect indigenous 'territories', but somehow they allow the elaboration of legal arguments in its favour. For example, the Law of Native Communities (Article 10), establishes that areas used sporadically for hunting, fishing and collection can be marked and titled; Article 13 of Convention 169 establishes that the term 'land' refers also to indigenous territories, and the Inter-American Court of Human Rights has established that the titling of 'collective property' is an obligation of the state (*Awes Tingni vs. Nicaragua*). However, territorial rights and 'collective property' remain contentious and ambiguous concepts at the international level. As it was developed in the previous chapter, the key concept of territory has specific features that make it different from property, however, whereas liberal legality tries to assimilate the concept into its logic; Amazonian indigenous peoples are demarcating their territory in a long term strategy until its comprehensive legal recognition.

In the Andes the notion of territory is less articulated than in the Amazon, nonetheless, in the last years, there is a process of territorial reinvention (see 6.3.3). This process not only entails a reinvention of territories but a reinvention of indigeneity itself (see next chapter). It is important to note for now that these political and ontological processes are based on the principle of self-determination.

7.2.3. The right of self-determination, the national interest and the appropriation of liberal legality

To consider 'consultation' a mechanism of guaranteeing the exercise of the right of self-determination of indigenous peoples (Sevillano, 2010) is mistaken. As the International Andean Coordination of Indigenous Organisations - CAOI explains (2012), without recognising the right to consent, consultation can be reduced to a simple procedure directed to legitimate the imposition of norms, programs and projects that negatively impact on indigenous peoples' rights.

Thus, one consequence of the right and principle of self-determination is the right to consent, wrongly called 'right to veto' because it does not derive from a special power conferred to indigenous peoples due to their hegemonic position in the democratic system (as is the case in presidential veto power), but it is expression of their self-determination as peoples.

Foundational rights are very difficult to conceive and regulate within the context of global coloniality. Indeed, states are reluctant to recognise self-determination for indigenous peoples because of the alleged possibility of secession. But in reality what most indigenous peoples aim to achieve with self-determination is the respect of their vital spaces instead of the creation of new states. The anthropologist Richard Smith (2003) has worked with indigenous movements for decades and has found that self-determination refers to the right of a people to choose the type of relation it wants to maintain with a dominant state. There are of course some exceptions such as the radical proposals of the American Indian and scholar Ward Churchill, who calls for the constitution of an Indian nation independent from the U.S. or the radical proposals of the activist Felipe Quispe in Bolivia for the constitution of an independent Aymara nation. However, most academic and political proposals range from some degree of autonomy through decentralisation within a dominant nation such as the liberal

multiculturalism in Latin America (see 3.3.3), to political projects that recognise Indian nations within the state, such as a Federal state in Tully's proposal (see 3.3.2) or the Plurinational state of Bolivia (see 4.3.3).

Independent states	→	Radical Indian projects (Churchill/Quispe)
Plurinational State	→	Decolonial project (Bolivian constitution)
Federal States	→	Postcolonial/liberal project (James Tully)
Administrative autonomy	→	Multicultural project (Most constitutions in LA)

During my fieldwork all those interviewed agreed that self-determination was not a secessionist project, but a project of respect of indigenous territorial rights and way of living: *"we are not talking about a new state, we are Peruvians as well"* (Indigenous interview 22, 14-04-13); *"with 'integral territory' indigenous peoples are not trying to be independent from the state"* (Indigenous interview 5, 08-04-2013); *"self-determination is not secession, what we want is that the state recognises the ancestral territory"* (Indigenous interview 7, 08-04-13).

Then, to exert the right of self-determination does not mean secession, but an adequate relation between indigenous peoples and the state. In Peru, self-determination is legally recognised within the context of multiculturalism. Multiculturalism is equivalent to pluri-culturalism or the respect of the cultural plurality. Thus, Article 2.19 of the Constitution recognises the 'ethnic and cultural plurality' of the country and the right of each person to maintain their ethnic identity.

Article 89 and 149 of the Constitution recognises self-determination as the autonomy of peasant and native communities (which involves the right of autonomic organisation, communal work, use and free disposition of land, economic, administrative and jurisdictional autonomy within the 'Law'). Nonetheless, as this autonomy does not mean that indigenous peoples hold a complete power of decision over their land (and they have no right to the resources of the subsoil), their claims often go toward decolonial projects. A decolonial project, as in the case of Bolivia, would mean the recognition of indigenous peoples not as 'communities' but as 'nations' and the recognition of their vital spaces not simply as 'land rights' but as 'territorial rights'.

However, even in decolonial projects or any other project in which there is a dominant state, the principle of self-determination is affected by norms of exception and national interest. The application of these norms has always been connected to the expansion of extractive industries. Indeed, as Orihuela asserts (2012), the rise of modern extractive industries is connected to indigenous exploitation and dispossession, in the mines of the Andes or the rubber plantations of the Amazon. Then, it was natural that in post-colonial nations, land rights were not well defined and the state owned all underground resources: the property of natural resources passed from the Spanish Crown during the colony to the republican regimes (system of eminent dominium) (Del Castillo, 2004). This allowed the legal displacement of communities in the name of the greater public good.

The state, thus, by exception can exploit resources in protected areas created for their environmental fragility (Law 26834, Art. 21 b., 1997), and even in reserves for indigenous peoples in voluntary isolation (Law 28736, Art. 5 c., 2006) because the untouchable character of the reserves might be broken by the state on behalf of the

national interest (Finer et al, 2008; Hughes, 2010). Therefore, by designing policies from the logic of coloniality, the government completely controls peoples' vital spaces, then, the reduction or violation of indigenous rights is a necessary sacrifice given the promise of development (Stetson, 2012).

This power over indigenous peoples is usually justified as an expression of state sovereignty (the argument that indigenous peoples cannot have a 'veto power' over the state) or the necessity of economic development for the fulfilment of the government's social responsibilities (Laplante and Spears, 2008). But as showed before, indeed, there is a historical connection between the political economy of extraction and the power to exploit indigenous territories on behalf of national interest. This connection expresses the logic of coloniality by which certain peoples can be exceptionally sacrificed on the ground of the alleged economic benefits for all (economic argument) and the national cohesion (sovereign argument). But what is obscured is that the people sacrificed usually have been ranked as the less civilised and constructed as those who urgently needs be integrated into modernisation. It is also obscured that these people are often those who have suffered most from environmental disasters and have never enjoyed real state public services. As they usually say, 'the state only reaches us when it wants to exploit our territory'.

Indeed, the sovereign argument is very problematic because it is rooted in the colonial denial of indigenous foundational rights: all the consequences of this 'national cohesion' when territorial rights are at stake, entail the exclusion or inclusion of indigeneity. The economic argument is also problematic. The scholar and activist Eduardo Gudynas asserts (Activist interview, 26-10-13) that the argument about the necessity of extractivism for supporting social programs and development goals is flawed because in the majority of cases there is no correlation between revenues from extractivist industries and specific social achievements, and governments spent a lot of money in subsidizing extractivism and managing its social and environmental impacts.

However, the latent power to exploit indigenous territories is embedded in the logic of the nation-state. In this context, the discursive use of the term self-determination is no guarantee of the protection of rights. In a recent case (*Tres Islas*, 2012), the Constitutional Tribunal recognised the right of self-determination of a community against illegal logging, but: Would it be the same if self-determination would have been opposed to development state projects or extractive activities? Apart from that decision, the Constitutional Tribunal indeed has been very conservative when deciding about indigenous rights (Ruiz, 2011).

But the Law is still useful. Activists (interview 3, 24-10-2012; interview 13, 12-06-13) assert that they supported the approbation of Consultation Law because of the political opportunity. Indigenous peoples know about the limitations of the Consultation Law, they are very critical of it but at the same time they demand the government to respect the Law by implementing more consultation processes (Indigenous interview, 30, 26-04-13). Thus, in the same way with titling procedures and international human rights, indigenous peoples appropriate strategically the Consultation Law to express their political claims and to go beyond it. Liberal legality becomes a medium to express their indigeneity.

In sum, the new legal indigenism is very similar to the previous legal models: it entails recognition of rights according to Western parameters; norms of exception to impose the capitalist logic, and the potentiality to become a mediatory tool for indigenous peoples to struggle for their self-determination.

7.3. Indigenous political struggles and the conflictive transition toward an intercultural state

In Peru, there is a plurality of socio-environmental conflicts but some of them are located beyond the extractive governance, namely, beyond the rules and institutions for political participation, transparency and economic redistribution within the political economy of extraction. Nonetheless, scholars and policymakers intend to solve all conflicts by reforming and re-enforcing the extractive governance, reproducing in this way legal and institutional arrangements that deny indigenous territorial rights and self-determination.

7.3.1. Extractive industries and social conflicts

Is the new wave of legal indigenism creating a new model of the state (an intercultural state)? The new intercultural policies and legislation are confronted with a context of aggressive extractivism and social conflicts. It is therefore important to analyse with further details the tensions between the new legal indigenism and extractivist policies.

Colonialism allowed the emergence of extractivism and the Peruvian participation in the global economy through the exportation of Andean silver and the importing of European merchandise (Orihuela, 2012). After the silver boom, the guano international exportation cycle (1840s – 1870s) occupied its place in a context of the economic elite's consolidation in the coast and indigenous peoples' exclusion. This political economy generated unequal growth and political instability (Orihuela, 2012) reproduced in the following economic booms: the guano cycle was replaced by the rubber boom in the Amazon (1890 – 1920) and then again by mining and oil exploitation.

Through these stages Peru had maintained a small public sector and low industrialisation in a context of natural resources economic dependence, the political influence of foreign corporations and the power of the elite's exporting oligarchy, which fostered liberal economic measures to facilitate the exportation of raw materials (Wise, 1994). This pattern was tried to change in the late sixties, when Peru joined the Latin American *dependentista* policy trend (see 4.2.1), and the military government of Velasco (1968–1975) promoted import substitution industrialisation, the nationalisation of industries and land reform (Orihuela, 2012). However, these policies were implemented through the generation of an enormous public debt and chaotic macroeconomic administration. Besides, in the seventies the oil shock generated a profound crisis in public finances which lasted until the eighties and was deepened by the first government of President Garcia (1985-1990) (Pastor and Wise, 1992; Wise, 1994; Alarco, 2010).

Fujimori's election (1990) constituted the neoliberal turn in Peru, which was supported by economic elites, the technocracy, the military, and the international financial institutions (Mauceri, 1995; Arce, 2003). With the support of these actors, Fujimori

imposed an aggressive package of neoliberal reforms combined with political authoritarianism (Wise, 1994; Roberts, 1995; Mauceri, 1995). These reforms were based on the Washington Consensus and included the elimination of barriers for trade and investment, restriction to state intervention in the market and massive privatisation (Crabtree, 2000). Mining and hydrocarbons, in particular, were prioritised with a flexible tax regulation: the exemption of royalty payments and income tax for new mining operations until they had recovered their initial investments and tax-stability contracts (Orihuela, 2012; Arellano, 2011). The political justification for this aggressive neoliberal turn was the urgency of escaping from the economic and political disaster left by President García (hyperinflation and widespread terrorism) through the imposition of political and economic order.

President Toledo re-composed democracy in 2000 but his economic measures merely developed Fujimori's neoliberalism (Haarstad and Fløysand, 2007). Toledo's political banner was the benefits of the 'trickle down': everyone would gain from the natural outcomes of economic growth. Toledo's policies achieved economic growth but in a very unequal way, generating no important decrease in poverty and unemployment figures (McClintock, 2006; Lee, 2010).

As explained in the last chapter, President García's second period (2005 - 2011) reinforced the neoliberal project. The (questioned) official figures shows that economic growth increased and poverty rate decreased from 48% to 34% during his government (INEI, 2010), but social and political instability remained a fundamental problem. The first critique is that economic growth was achieved thanks to the increasing of minerals prices and China demand, which entails an unstable growth (Lee, 2010). Moreover, apart from the official figures, there are other figures that show the huge inequality of the country (See 1.3).

Furthermore, García's government deepened extractive policies by strongly promoting extractive activities. During this period the number of social conflicts related to socio-environmental concerns increased considerably. What aspects of extractivism oppose local communities? Rent distribution, labour conditions, environmental degradation or something deeper? Let's see briefly some of the most relevant social conflicts of the last years:

In Tambogrande (Piura), peasant's grassroots organisations opposed a project developed by Manhattan Minerals (a Canadian company) in five years (1998–2003) with a cost above of US\$60 million. The organisation claimed that agriculture (its main economic activity) would be displaced by the project, which would provide only few jobs in exchange for major ecological impacts (De Echave et al, 2009; Muradian et al, 2003; Arce, 2008). The movement organised an unofficial local referendum and the result was that 93% voted against mining, and Manhattan was obliged to abandon the project (Bebbington and Williams, 2008).

In Cajamarca, Yanachocha mining has been developing mining projects in a context of social and environmental concerns (Arce, 2008; De Echave et al, 2009). One of the main conflicts was about the exploitation of the Quilish Hill. Peasant and local organisation demanded a stop to the operations because the project was threatening the water supply and agriculture. Yanachocha had to renounce exploitation of the Hill after five years of tense negotiations (Arellano, 2011; Palacios, 2009). Today, another mining

project of Yanacocha in Cajamarca (Conga) has been paralysed because of the local communities' opposition.

In the case of Majaz Mining in Piura (today Río Blanco Copper S.A.), a lot of social conflicts emerged around a mining project located in the community of Yanta. The opposition of local people against the possibility to convert the rural zone of Piura into a mining district (De Echave et al, 2009), led to a situation in which *comuneros* were tortured by private security of the company and it had to compensate the victims in 2011 (Servindi, 2011).

In Apurímac the project *Las Bambas* involves conflicts around labour issues and compensation of *comuneros* displaced. The company Xstrata Copper has developed an ambitious relocation plan of the Fuerabamba's community to relocate all the people (more than 1000) in five years. Recent tensions emerged not because of the opposition to the project (almost all were agreed) but because of the compensation and other economic promises of the company (Company representative interview 2, 13-05-13). Xstrata mining also has developed the mining project Tintaya in *Espinar - Cusco* for many years, and local people's claims seek to negotiate the social and environmental conditions of continuity of operations (De Echave et al, 2009). These two cases are understood as 'conflicts of coexistence' (Activist interview 7, 02-05-2013), in which mining activities have been already there, and people negotiate a new social contract with the company regarding economic, social and environmental terms. However, companies should not assume that consent cannot be rescinded when new concerns arise (Laplante and Spears, 2008), namely, conflicts that appear as manageable can later become problematic. For example, in the case of Tintaya in 2012 social unrest emerged because of the alleged contamination of the water and environment of the zone due to mining activities. The situation became problematic with governmental imposition of the state of exception, the imprisonment of local leaders and total grassroots opposition to the company.

The above mentioned conflicts are located in Andean regions where politics is articulated through peasant communities. However, the conflicts are very diverse. The controversies in Cerro Quilish and Tambogrande show that "some projects may never obtain community support, given the importance of certain sites to people's identities, livelihoods and well-being" (Laplante and Spears, 2008: p. 115).

In that context, many authors propose a typology of conflicts. Arellano (2011) distinguishes three types of conflicts: 1) Anti-mining conflicts; 2) Conflicts to achieve power of negotiation on economic compensation and better labour opportunities; 3) Conflicts for *canon minero*¹⁴ led by local authorities and population. According to Arellano (2011), anti-mining or 'all-or-nothing' type conflicts are conflicts of resistance that occur when local people perceive that they do not need mining: they have their own social and economic arrangements and mining is likely to conflict directly with them. These types of conflicts would be exceptional whereas redistributive conflicts would demonstrate that extraction is not the problem. Similarly, Tanaka identifies four patterns of conflicts: 1) the perception of incompatibility of economic activities and the way of life; 2) the access to private economic benefits (population claims compensation and benefits from companies); 3) the access to public resources (claims of acquiring more

¹⁴ Percentage of the total tax revenues derived from mining and that is distributed to local and regional governments in which mining is undertaken.

benefits from public revenues or *canon*); 4) the management of public goods and resources (disputes on the mode in which governments spend and administer public resources).

These different typologies have different emphasis regarding the rationale of social conflicts. However, for these and other authors even though social conflicts are plural, there is an absolute tendency that explains all social conflicts and the way to overcome the tensions is by reforming the extractive governance.

7.3.2. Theorising social conflict: Laws, institutions and hidden indigeneity

Socio-environmental conflicts related to extractive industries are explained as problems of 'good governance', which can be solved by reinforcing or modernising the institutional design related to political participation, rent distribution, transparency and conflicts management. 'Good governance' is constructed through institutions that allow political participation, the enforcement of environmental laws and rent distribution in the context of the political economy of extraction, supporting and justifying it. Namely, good governance is indeed extractive governance. These views explicitly or implicitly deny structural analysis and explanations.

Regarding political participation, social conflicts are explained as a result of the absence of a party system or representative channels through which contradictory social visions are mediated (Panfichi, 2011; Vergara, 2011). This problem would be worsened in a context of institutional weakness and lack of the state's territorial consolidation, institutional capacities, long-term policies and consolidated political actors (Tanaka, 2012; Meléndez, 2012). Therefore, the main recipe to solve social conflicts is to address the normative and institutional lag related to environmental norms and - most importantly - the formal political system (Tanaka, 2012).

The distributive approach argues that social conflicts would be produced because of the high revenues obtained from mining and the large and sudden *canon minero* transfers to under-prepared regional and local governments. It generates a process of municipalisation of politics: there is a transformation of communities as collectives connected to agricultural production and peasant way of life to collectives that compete for mining rent (Damonte, 2012; Damonte and Glave, 2012). Therefore, the focus on the more symbolic 'all-or-nothing' conflicts is misplaced. Local conflicts emerge because of weak political institutions and ill-designed policies for rent distribution (Arellano, 2011).

In Latin America there are two strategies for distribution: distribution systems directed to specific national development outcomes (the case of Chile) and compensatory distribution schemes directed to compensate those affected by the negative impacts of extractive activities (as is the case of Bolivia, Colombia and Peru). There is also the possibility to combine those schemes, for example, in Brazil the transfer of funds goes to those regions where the activity takes place, but the regional government has to use the revenues to implement its regional development plans (Damonte and Glave, 2012).

The Peru's General Mining Law (*Ley General de Minería*, 1992) established incentives for investments in the extractive sector, but did not regulate mechanism for revenues distribution. The Canon Law was enacted in 2001 with the aim of compensating

affected communities with cash transfer derived from the revenues of the activities: 50% of the income taxes collected correspond to the central government and the other 50% to the producer regions (Damonte and Glave, 2012). These transfers seek to diminish social conflicts and foster the acceptance of new extractive projects. The problem is that the conflicts in Peru were not reduced; on the contrary, they increased. According to Arellano (2011) this is because implementation of the wrong distributive strategy: local communities see conflicts as mechanism to negotiate and obtain more resources.

Other scholars emphasise the problem of transparency: people do not know how much the municipality receives and how much it is going to invest. It generates conflicts and a negative perception of authorities (Zarate and Durand, 2005). For others, the main problem is conflict management: concentration of interventions in crisis stages, and not in prevention and after crisis (Huamaní and Macassi, 2011).

These governance arguments suggest that the emergence of social conflicts responds to ill-designed policies, therefore, the solution would be policy reform without revising the rationale on which those policies are deployed. 'Good governance' obscures the fact that in many conflicts there are issues of indigeneity and different worldviews. These conflicts do not pursue 'good governance'; on the contrary, they transcend the ideology of the current governance: they are not about policies but about politics in its more profound meaning.

Thus, when scholars emphasise the role of the formal political system and redistributive policies to solve social conflicts, they are proposing a very limited view of politics: they are converging politics into laws and policies. This view of politics is indeed a pretension of undertaking policy-making processes to re-enforce the current extractive governance.

A more profound view on politics would suggest that in some cases the extractive governance is not the solution. The fact that the *Baguazo*, the most important social conflict of the last years in Peru, involved a massive mobilisation of indigenous peoples against pro-extractive laws and policies instead of the gaining of extractive revenues or participation, must be a sign that the problem transcends the governance approach.

In spite of this fact, the *Baguazo* is conceived as specific conflict but based on the same rationale of distributive conflicts (Arellano, 2011), or as a problem of political representation (Melendez, 2012), or as a problem of institutional weaknesses of the Presidency and the Congress in enacting and not controlling unconstitutional decrees (Tanaka, 2012).

The focus on the political system, formally understood, is misleading. Paredes (2010) analyses indigenous politics in its relation to the representative system, arguing that indigenous political organisations (such as AIDSEP) have obtained very few achievements and its relation with indigenous electoral groups is scarce. For her even though there are emerging political movements with an indigenous agenda in some regions, they have not constructed mechanisms of representation as in the case of Bolivia and Ecuador.

These kinds of analyses tend to construct a wall between formal politics of the political parties and informal politics of social movements. Any achievement not canalised through the formal system is a failure, a fake or minimum achievement, the only path for social movements is to domesticate themselves, to become '*indios permitidos*' (see 3.3.3). These perspectives overlook that indigenous peoples have a long tradition of political use of the formal legal and political system. In the last years Awajun/Wampis have occupied positions of responsibility in the Peruvian state. In the departments of Amazonas, San Martín and Loreto they have been elected mayors and *regidores*. During my fieldwork I found that in Imaza and Condorcanqui (district and province of Amazon department) there were Awajun in key positions at the Ministries of Education, Agriculture and Environment.

Furthermore, indigenous peoples outside the national political system have achieved surprising results. First of all they have maintained their culture and social and legal arrangements in spite of years of legal and ontological violence. This has been obviously a political struggle that entailed negotiations, disruptions and consensus with the state and companies. There are also achievements related to the specific application of Western Law: the massive titling of native communities and the enactment of several laws which recognise indigenous rights at national and international level (see the previous chapter). The fact that many times indigenous claims are assimilated into formal policies must not make us forget that indigenous politics works outside formal politics. Evo Morales was not elected merely because of the efficient electoral marketing or the good articulations between the bases and its formal party. The articulations responded to years of indigenous struggles and the use of the specific political moment.

Indeed, the *Baguazo* cannot be explained in narrow terms by reducing conflicts to a matter of distribution, political participation or conflict management because this and other similar conflicts have been formed by long and complex processes of coloniality. In 2009 Garcia's government enacted a package of decrees to facilitate the exploitation of natural resources in the Amazon not because a lack of coordination within the government or lack of efficient policy-making, but most importantly, because these laws were embedded in the logic of coloniality by which the Amazon is still a space for massive exploitation and their inhabitants are barriers for the development of the whole nation. This historical factor is usually obscured and minimised by those scholars who emphasise the governance approach.

It is also important to emphasise the dispossession of identities deployed by the processes of extractivism. The implementation of the political economy of extraction converts indigenous peoples into mining workers, merchants or poor peasants if they are obliged to migrate to agricultural areas. The detachment is a tragic process by which capitalist expansion is able to appropriate the resources left by indigenous peoples. Extractivism is not only a process of accumulation and dispossession of land and resources, it is also a process that, based on a specific ontology and epistemology, produces subjectivities and denies indigeneity.

These different processes of dispossession of land, resources and subjectivities have had different extensions in terms of time and space. In the Central Andes, extractivism and racism were the principles of rule-making for the whole society, with legal devices of administration and plunder embedded in these two logics. In the Amazon, the different

forms of extraction (gold, rubber and oil) did not dominate the whole Amazonian population; many indigenous peoples preserved greater degrees of autonomy than Andean peoples. That is why not all social conflicts share the same rationale and not all of them are related to 'good governance'. Those indigenous peoples and local communities that maintain their identity, territory and ancestral social and legal practices claim respect for their own forms of governance.

This is clear with the *Baguazo*. Apart from Garcia's decrees, one of the facts that triggered the *Baguazo* was the accusation of complicity between state and mining companies in the exploitation of *Cenepa* frontier zone, regardless of the agreement between the state and indigenous peoples to create a national park that would ensure the protection of indigenous territories. Thus, in spite of the administrative sanctions and judicial claims led by the Awajun local indigenous organisation ODECOFROC, the mining company Afrodita has been operating in the area under the permission of a fake indigenous organisation and the opposition of the *Cenepa* population (Indigenous interview, 26-09-13). In addition, ODECOFROC leaders have been accused of kidnapping Afrodita workers where they claim their right to territory.

Since Afrodita is located in the basin header of *Cenepa*, the main concern of Awajun is the ecological fragility of the zone, as one Awajun asserts: "*to explore and exploit mining in that zone risks all the micro climate of Condorcanqui... the concern is then on the destruction of hydric sources...*" (Indigenous interview, 12-04-2013) What is relevant to highlight is that almost all the interviewed reject Afrodita mining: indigenous that nowadays are state officials working in the zone as members of the Ministry of Environment (Indigenous interview, 11-04-2013), or working in Lima such as ex-AIDSESEP president Gil Inoach (Indigenous interview, 17-10-12), or an indigenous public politician (Indigenous interview, 18-04-2013), or leaders of local organisations (Indigenous interview, 26-09-13) and regional organisations (Indigenous interview, 15-04-13) and NGOs indigenous experts (Indigenous interview, 15-04-13), all of them and many others agree that Afrodita must leave.

The general view of indigenous peoples, who have many disagreements among them and in many cases have no gains from political activism, denies the general allegation of companies and their experts that the opposition of mining activities derived only from their interest to negotiate money to allow the company to operate (Company representative, 12-04-13; Company representative, 21-05-13). For Awajun, in the case of Afrodita there is no space even for consultation: "*consultation is not our interest, the only decision is no, no is no because there is a river source ...*" (Indigenous interview, 15-04-13). Similarly, another Awajun says that it is possible to talk with the oil company that attempts to undertake oil exploitation in the district of Nieva, and undertake the consultation but with the mining company there is no reason to talk because Afrodita shouldn't stay there (Indigenous interview, 12-04-2013). This perspective is shared by activists and even by state officials in Lima (State official interview, 10-05-2013).

Awajun opposition against the oil company (first, *Maurel et Prom* and now *Pacific Rubiales*) is less radical because it does not compromise extremely fragile ecosystems.¹⁵

¹⁵ Another reason might be that oil exploitation in the Amazon started many decades ago, and numerous Amazonian indigenous peoples have coexisted with this activity. Oil exploration in Western Amazon started in the twenties, with a huge increase of production in the seventies. Oil projects caused major

However, the issue is that a comprehensive process of consultation must be undertaken. The oil company operations are located close to the district of Nieva, in the small community of Kashap. According to one local leader (Indigenous interview, 15-04-13) the company started to negotiate with the entire Condorcanqui province and when it realises that this methodology did not work, it only negotiated with the community of Kashap in spite of the fact that the project's impacts are extended to all Condorcanqui. For a historical Awajun leader (Indigenous interview, 12-04-2013), participation is the key problem with the oil company: they must not operate because the government has to implement a process of prior consultation that involves all Awajun-Wampis possible affected communities, without this, he asserts, social conflicts can emerge.

This position is reaffirmed by the general distrust of Awajun regarding extractive activities. A young Awajun intellectual (Indigenous interview, 04-04-2013) asserts: *"I don't believe that companies are good for communities ..., and it will be the case until the existence of more solid institutions to protect peoples from pollution"*. An Awajun woman leader (Indigenous interview, 09-04-13) asserts: *"if we see benefits from mining and oil companies without pollution we will agreed, but who guarantee that there won't be pollution? ... People from Lima are not interested in how we live, what we suffer, the jungle is far away, and transport and communication is difficult, what happens when pipeline breaks? It takes too much time to communicate and mitigate the damage, for us this is a big concern"*. Another local leader argues (Indigenous interview, 12-04-2013): *"more than 40 years ago passed here the North Peruvian pipeline. There was not been any direct or indirect benefit. For me oil is a necessary ill... But as the things go in Nieva, I am not agree..."*.

In the current context, indigenous peoples are recurrently going to UN offices and the Inter-American Human Rights System with petitions, precautionary measures and public hearings (for references: Salmón, 2013). Whereas indigenous peoples are struggling at national and international courts and institutions, the *Baguazo* aftermath in everyday life of *Awajun* and *Wampis* is terrible: the above mentioned contradictions reach a dramatic point in cases of protest criminalisation, which for an indigenous lawyer (Indigenous interview, 26-04-13) is deepening today.

Currently there are 53 people being processed for the *Baguazo* (among them, important indigenous leaders) with charges of killing and sedition, and the public prosecutor asks life imprisonment for them. Two indigenous peoples have domiciliary arrest in a small room in Bagua, very far from their community; they are obliged to rent a room to remain imprisoned with no possibility of working, reason why an Awajun asks: *"How Humala can allow that an indigenous be translated outside his habitat for house arrest?... It is a torture... The indigenous world is resented with the government"* (Indigenous interview, 09-04-13). In that context, indigenous peoples question the fact that politicians responsible for the tragedy have not been accused. According to a

environmental and social impacts: deforestation and contamination from oil spills (Finer et al, 2008). Around 99% of the Achuar population that inhabits the Western Amazon has unsafe blood levels of cadmium, a toxic heavy metal associated with oil exploitation (Orta-Martinez et al, 2007). Even the newer *Camisea* natural gas pipeline initiated in 2004 in southern Amazon has already had six major spills and numerous leaks (Napolitano and Ryan, 2007). Another issue of concern for indigenous peoples regards the growing number of hydrocarbon concessions overlapping proposed reserves for indigenous living in voluntary isolation, whose lack of immunity make them completely vulnerable to diseases brought by outsiders (Finer and Orta-Martinez, 2010).

historical Awajun leader (Indigenous interview, 12-04-2013), since the state first attacked the indigenous with legislative decrees, the state is the only really responsible. And there are more questions: “*why politicians are not guilty? Why the only guilty are indigenous peoples? “Where is the government that has political and legal responsibility?*” (Indigenous interview, 12-04-2013; Indigenous interview, 14-04-13) For an indigenous leader these questions are unanswered and this silent makes a proper reconciliation impossible (Indigenous interview, 08-04-13).

In sum, it is a mistake to ignore those conflicts in which the main concern is not the ‘governance’ (understood as rent distribution or political participation), but the questioning of the activity itself (Afrodita) or the questioning of the processes of decision making over the activity (*Maurel et Prom/Pacific Rubiales*). In these conflicts there is a long history of violence that has to be considered. For that reason, I suggest that in spite of its comprehensive pretension, the theoretical approach of Arellano and others is not adequate to grasp the complexity of indigenous conflicts vis-à-vis extractive activities. The respect of the different forms of governance that many indigenous peoples claim shows that the solution of many socio-environmental conflicts is beyond the extractive governance. It means that the absolute logic of the given extractive framework must be replaced by a political platform in which it is possible to discuss the boundaries and limitations of the political and economic foundations of the current institutional designs.

7.4. Institutionalising indigeneity in a ‘mining country’: the contradictions of state attempts of interculturalisation

Indigenous politics and social conflicts around extractive industries have changed the scenario of public policies in Peru. Whereas in the past the development project was implemented with policies designed by technocratic elites without concern of social movements, today social and indigenous movements are not only opposing extractive strategies, but promoting their own regulatory and developmental path: conflicts are more programmatic (Activist interview 7, 02-05-2013).

Specifically, the Consultation Law and the recent creation of a centralised institution in charge of environmental certification (SENACE) is a respond to indigenous peoples’ mobilisation in defence of their rights and local communities’ environmental concerns. There is a process, therefore, of policy construction from below, in which indigenous peoples and organisations have proposed relevant policy changes. This process is, however, very problematic. Social movements have many internal conflicts, contradicting ‘visions’ (see 6.4.2), and the state reception of indigenous politics varies between two poles: apparent open reception of proposals and strong criminalisation of protest.

The intercultural approach is repeated in strategic plans of different Ministries (education, health, development, and justice), the Consultation Law and many other legal devices. As mentioned before, this process has been accompanied by an integration of some indigenous intelligentsia into state national and regional offices. In *Condorcanqui*, indigenous peoples are promoting environmental services and agricultural programs from key positions in regional offices of the Ministries of

Environment and Agriculture. In Lima, I interviewed Gil Inoach (2012), ex-President of AIDSEP who today is functionary at the Vice-Ministry of Intercultural Affairs.

Gil Inoach (Indigenous interview 1, 17-10-12), heavily criticised for being state functionary, sees the state as a battlefield: *“The fight must not be abandoned; we are in the fight... It is possible to fight from inside and at the front, from different flanks. I always recommend to professional indigenous to negotiate with the state and occupy strategic roles because many times functionaries do not understand the indigenous theme and in spite of the budget they have, they do nothing...”*

Thus, the state is for Inoach a space for negotiation and transformation: *“We have to construct rights. Convention 169 does not give you all the rights, only give you ... the opportunity to talk with the State, and if you reject to talk is a disadvantage”*. That is the reason why Inoach criticises AIDSEP’s opposition to Consultation Law: *“they say implicitly no, then yes and clap the Law and later say no... that is not indigenous thinking, this is not a visionary attitude; visionary attitude is to stay inside when there are problems, only when you are not visionary you don’t know your path... This is the great weaknesses of the indigenous movement”*.

The attempts to integrate indigenous peoples into the state have never been so intense as today. In the past, indigenous peoples were merely subject of protection in state offices of ‘indigenous affairs’ or ‘indigenist institutes’ in different ministries, such as Transport and Communication (1921), Labour (1935, 1942, 1969, and 1981), Agriculture (1992) and Social Protection (1996). In all the cases the political power of indigenous offices was tiny. Nowadays, the creation of the Vice-Ministry of Intercultural Affairs can be understood as a response to the emergence of indigenous rights at international level (the 2004 Brasilia Declaration promotes the creation of Ministries, Vice-ministries or specific offices to foster indigenous policies); but the most active indigenous participation in the state is result of a change of perspective, from seeing indigenous peoples as subjects to protect, to seeing them as political actors.

Undoubtedly, there are good intentions in this process. However, although we are witnessing the best institutionality of indigenous peoples in Peruvian history, the political power of the Vice-Ministry of Intercultural Affairs is still low. Very close to this Ministry is located the Ministry of Energy and Mines, one of the most powerful and the main promoter of extractive activities within indigenous territories.

A high functionary and assessor of an ex-Minister of Energy and Mines (State official interview 6, 22-05-2013) is vehemently critical of the recent environmental and indigenous institutionality: *“The Ministry of Environment has an excessive conservationist emphasis... we have to be practical... you cannot... [make] consultation everywhere, that is stupid, this only generates chaos, disorder, un-governability”*.

This position is shared by companies (Company representative interview 1, 12.04.13; Company representative interview 3, 21.05.13). Close to the Nieva’s offices of the Ministry of Environment and the Ministry of Agriculture is the office of the oil company *Maurel et Prom* (whose concession rights have been recently transferred to *Pacific Rubiales*) and some kilometres away are located the mining operations of the company *Afrodita*, both of them with clear arguments about the necessity and inevitability of extractive activities and very critical of the environmental and

consultation administrative procedures (which are called '*tramitologia*' or administrative bureaucratic stages before exploitation).

An important functionary of the Ministry of Environment (State official interview 4, 02-04-2013) explains more contradictions at the level of laws and policies. The environmental legislation has been very flexible (with maximum permissible limits of pollution higher than most countries) and very low sanctions. The environmental certification of many companies has been approved with this permissible framework, then, the state cannot sanction companies even though they pollute heavily: "*this is a scheme that ties the hands of the authority*". Similarly, when I asked an ex-functionary of the Ministry of Energy and Mines about political and economic pressures to facilitate extractive activities with no proper evaluation and monitoring, the answer was that those pressures were not necessary because "*everything is pre-established*" and the state is "*pro-business*", "*in one moment the state could fulfil its monitoring role because of social unrest, but then things flows naturally and I think it is because of the passivity of all the circuit*" (State official interview, 3, 24-10-2012).

It seems then that extractivist activities are deeply embedded in state legal and political structures and discourses. And the deepest tension it generates is between the rights of the local and indigenous peoples and the right of the companies and the 'nation' to produce revenues from extractive activities. The case of the Reserve *Nahua, Nanti, Kugapakori* is paradigmatic. The state obtained funding from the IDB for exploiting the *Gas de Camisea* under the condition it constituted a protective reserve for indigenous people in voluntary isolation located close to the project. Thus, the state legally created the Reserve *Nahua, Nanti, Kugapakori*. Contradicting the decree that creates the protected area, the state allowed the extension of oil activities overlapping almost 100,000 hectares of the reserve, and currently is trying to extend the area of exploitation.

Thus, we can observe the schizophrenic character of the state: on the one hand, it recognises the right of indigenous peoples in voluntary isolation and, on the other hand, it allows the exploration and exploitation of gas within their reserve. The state argument is that the project would bring health and education services. However, public services should not be connected to the development of extractive activities: "Indigenous peoples must not obliged to accept environmental degradation and health impacts to receive these 'tokens' of development. It is the state's obligation to provide them, regardless of the development of mega projects" (Urteaga-Crovetto, 2012: 123).

In sum, the integration of indigenous discourses and intelligentsia into the state structure is contradicted by the state aggressive promotion of extractive activities. It is even in contradiction to indigenous rights. Thus, even though the state recognises the necessity to 'integrate' indigenous peoples into the state, it establishes many barriers to the possibility of reforming itself. And a proper recognition of indigenous rights needs more than superficial reforms to hide these deep contradictions.

Recent norms (Decrees 054-2013-PCM and 060-2013-PCM) deepen those contradictions by promoting investments and at the same time sacrificing natural, archaeological and cultural heritage and the rights of indigenous peoples. The new norms modify procedures for obtaining archaeological and environmental certificates before exploitation with very short periods, rendering a proper evaluation of a project's

impacts impossible (Leyva, 2013). According to one high state official (State official interview 8, 13-06-2013): *“nowadays there is a sort of inversion of the priorities of the state, the supreme good is investments above any other value such as social and economic rights or collective rights”*. Likewise, an ex-high official in the Vice Ministry of Intercultural Affairs argues in relation to these recent laws and regulations *“the indigenous question has completely disappeared from the political agenda in this country, this is really sad”* (State official interview 9, 10-09-2013).

New pro-businesses legislation has emerged with a radicalisation of anti-indigenous discourses. Although the National Society of Mining, Petroleum and Energy (SNMPE) praised the Consultation Law at the beginning and five ICM members operating in Peru (Inmet, Newmont, Rio Tinto, Talisman, and Xstrata) made explicit public commitments to consultation (Voss and Greenspan, 2012), recently corporate sectors heavily criticised consultation law for retarding their investments (Salmón, 2013).

In addition, the private sector tries to restrict the notion of ‘indigenous’. The Consultation Law expressly stipulates that peasant and native communities ‘can be’ indigenous peoples, then, for companies the Law allows defining many communities as not indigenous. In addition, because the regulation establishes very rigid requirements to be considered as indigenous, pro-businesses experts such as Santillana (2013) argue that indigenous peoples do not exist in the Andes because in Peru we all are ‘mestizos’, so Andean peasant communities such as the Cañaris would not be an indigenous people.¹⁶ This is the same argument of a high functionary of the Ministry of Energy and Mines (State official interview 6, 22-05-2013): *“a serious problem is that what we call indigenous..., even though they have some features and lingua, are mestizo peoples”*. In the same way, Yanacocha CEO, Roque Benavides has said that peasant communities are an ‘invention’; they are not more indigenous peoples. These ideas have influenced President Humala, who in a public interview (2013) said that indigenous peoples only exist in the jungle.

The first consequence of the integration of this business approach in high governmental spheres is that the database of indigenous peoples - whose creation and actualisation by the Vice-Ministry of Intercultural Affairs is a legal duty- was not published in time, apparently because of political pressure in not recognising indigenous peoples from the Andes. This issue and other related problems (such as the extension of oil exploitation in the above mentioned reserve for indigenous peoples in voluntary isolation) has made of the Ministry of Culture perhaps the most unstable public sector, in which high directors and Vice-ministers are constantly removed. On ex-high official of this Ministry asserts: *“there is a general institutional weaknesses [in the Ministry]... Some sectors opposed to indigenous peoples want to eliminate the rights recognised*

¹⁶ The community of Cañaris is located in the Central Andes, in the region of Lambayeque, where the Canadian company Candente Cooper Corp attempts to undertake mining activities. The company supposedly obtained the agreement of the community (the ‘previous agreement’ is a requirement of Peruvian Mining Law for the companies to exploit the resources below the owner’s lands. This is not a consultation process, but a private contract). However, the Cañaris demanded a process of consultation as an indigenous people. It generated a debate among mining experts and anthropologists because in spite of the fact that the Cañaris maintain ancestral rules and language, and they consider themselves as indigenous, the state and the company argued that they are *mestizos*. As explained by Rivera (2013): *“Cañaris shows how we persist in ignoring ... the indigenous side of Peru. And this ignorance is so intense that it well could be doubted if it is due to chronic ignorance or hidden will”*.

[including the Law and regulation of Prior Consultation]... I have been in meetings with functionaries and entrepreneurs in which the main proposal was to denounce the Convention 169” (State official interview 9, 10-09-2013).

Regarding the dispute around the notion of ‘indigenous’, it must be noted that negating the category of ‘indigenous’ to peasant communities is even legally wrong. In the last 50 years all legal devices refer to ‘peasant and native communities’ as indigenous peoples according to international standards. Moreover, the Peruvian state recognised in 2009 that peasant communities were indigenous peoples in the State Report to the Committee of Experts in Application of Convents and Recommendations of the ILO (CAOI, 2012). Furthermore, the historical analysis of the previous chapter shows that the term ‘peasant communities’ is a label of an indigenous reality. The fact that many communities have lost their main features (because of the aggressive intrusion of Western culture, legality and economy) or many of them are in process of acculturation does not mean that they do not have the right to reinvent themselves and claim their foundational rights (see next chapter).

As argued by an activist and anthropologist: *“there are some peasant communities which hold their communal title but they do not have organic life as communities, so they just want to sell their land... But those communities that remain as organic indigenous peoples must not be ignored just because there are different experiences ... These different experiences are due to historical processes of indigenous elimination promoted by the state, it is not because the communities one day just wanted to deny their indigeneity” (Activist interview 3, 26-03-2013).*

In the next chapter I discuss the politics of indigeneity. Now what I would like to emphasise is that the state contradicts itself constantly. It recognises collective rights of indigenous peoples but simultaneously restricts these rights by promoting strongly extractive activities (Salmón, 2013). For many in the state and private sector, including an activist and current public official (State official interview 5, 10-05-2013), this is because the government did not know what it was getting into when it approved the Consultation Law. Nonetheless, what is relevant to observe is that even though indigenous peoples criticised many aspects of the Consultation Law and regulations, they do not renounce it, they appropriate liberal legality and go beyond it. Companies, in contrast, do not criticise specific aspects of the Law but deny the whole indigenous peoples’ legality. The state is in the middle, becoming a schizophrenic state. Consequently, after the *Baguazo* and Consultation Law, social conflicts have not stopped. The creation of institutions in charge of environmental control and intercultural relations has not changed the state extractivist logic and the aggression of indigenous peoples’ territorial rights.

7.5. Conclusion

The Peruvian state is schizophrenic: it has enacted new indigenous laws and institutions (a third wave of legal indigenism), but at the same time, it is reinforcing extractive strategies even in open contradiction to indigenous rights. These contradictions occur because coloniality is still embedded in the legal, economic and political structures.

Thus, Consultation Law expresses the logic of coloniality in which indigenous peoples are not active actors of an intercultural dialogue but passive receptors of state arbitrary decisions. Moreover, the focus on consultation obscures foundational rights of indigenous peoples such as territoriality and self-determination. Foundational rights have always been considered in indigenous agendas, but because of the impossibility of directly expressing them in a context of liberal capitalist institutions, these rights have been translated into liberal devices such as 'collective property' or 'titling processes' until the political moment allows further developments. Meanwhile, the state still has total dominium over indigenous territories through exceptional mechanisms of exploitation on behalf of the 'national interest'.

This power is supported by economic and sovereign arguments which obscure the fact that the people often sacrificed on behalf of national development are those ranked as un-civilised and needing inclusion; they also usually are those who most have suffered from different types of dispossession. This is because extractivism is the economic engine of coloniality: the pattern of power inaugurated with colonisation by which indigenous territories and subjectivities are dispossessed is located at the ideological basis of the current state structure and its economic development.

In that context, it is misleading to observe all social conflicts as problems of 'good governance' derived from the lack of formal political representation or lack of a proper regulation for rent redistribution. These approaches forget that behind these governance problems there is a legal and institutional violence embedded in coloniality that establishes the context in which social conflicts are developed. It is legal and political violence and not governance that is the main source of conflicts with indigenous peoples. This situation is particularly clear in the Amazon and the case of Awajun and the *Baguazo* in which social conflicts were preceded by decades of state and company aggression over indigenous territories.

Chapter 8: The *Baguazo* re-considered: local struggles/global utopias

8.1. Introduction

In this chapter I reflect on fundamental questions related to indigenous legality and politics that emerged with the *Baguazo*. In this way, I explore the potential and limitations of indigenous politics in Peru and the global arena, the new political articulations around the category of ‘indigenous’ and the engagement with indigenous principles and agenda by different indigenous and non-indigenous social movements. The general aim of this chapter is to present how indigenous politics, in very contentious and complex ways, is proposing the enlargement of the political and the reinvention of the current political imagination in Peru and beyond.

In the first part, I explore the politics of the appropriation or dispossession of indigeneity. I discuss the possibility to re-invent indigeneity for those who apparently have lost their indigenous character, and the significance of the *mestizo* as a category able to contain indigenous reaffirmation.

In the second part, I discuss how indigenous politics can be articulated through *interculturalidad* and *Buen vivir*, their challenges and potentials. First, I analyse the political articulations among different indigenous peoples in Peru, and the intercultural dialogue between indigenous peoples and the state and companies as a constant risk of deleting the indigeneity. Then, I explore the emergence of *Buen vivir* in the Amazon and how it can be articulated with the post-extractivist agenda. Finally, I analyse the epistemic/ontological and structural (national and international) limitations to implement the *Buen vivir* project in the state.

In the last part I focus on the global character of indigenous politics to overcome the previous mentioned limitations. First, I discuss the current processes of indigenisation of politics and the appropriation of indigenous values by non-indigenous social movements, and explore the limitations of this kind of politics. Finally, I explain how indigenous politics is enlarging the political and proposing a new political imagination.

8.2. The *Baguazo* and the meaning of indigeneity today

In Chapter 6 I analysed the roots of the *Baguazo* beyond the simple analysis that relates it to García’s neoliberalism, his ‘dog in the manger’ ideology, and the unconstitutional decrees he enacted. This short-time memory might be complemented by relating the *Baguazo* to the deception carried out by the state against the *Awajun* in transforming an area that was supposed to be constituted for ecological protection into a mining one, but still this interpretation neglects a comprehensive analysis of the underlying causes of the conflict. I suggested that to understand the *Baguazo* it is necessary to understand the legal and ontological violence that historically has been exerted against the ‘indigenous’. The logic of coloniality has allowed ranking and governing the Indian in discursive and material ways, and this logic has been maintained in the different colonial and post-colonial settings in Peru.

The Law and the different projects of transforming the indigenous territory into private property or communal property, or transforming their social organisation into socialist cooperatives or liberal companies, are examples of how coloniality has been deployed through a legal violence reproduced in the Andes and in the Amazon, in the past and the present. The way in which indigenous peoples have been portrayed as savage and primitives, or the way in which official discourses have denied indigeneity in order to convert the Indian into a peasant or entrepreneur, are examples of an ontological violence, a coloniality of being, exerted in the Andes and the Amazon. This ontological violence has been deepened even by well-intended intellectuals who ranked the Amazonian indigenous peoples as even more primitive than the Andean Indian and ignored their politics of self-determination and territoriality.

This process of dispossession of territories, resources and identities has been normalised; the silent and slow violence that it represents only became evident in situations in which the resistance and the repression became spectacular such as occurred with the *Baguazo*. It does not mean that the *Baguazo* has no special significance. In Chapter 7, I analysed the institutional changes generated by the *Baguazo*, however, I discussed how the new institutionality still expresses the logic of coloniality over indigenous peoples by subjecting their destiny to the 'national interest'. Indeed, the *Baguazo* is neither an end nor a beginning, since the process of dispossession remains today. One of the most important aspects of this process becomes evident with the aftermaths of the *Baguazo*: the re-emergence and denial of indigeneity.

Indeed, the *Baguazo* fostered the rise of indigenous politics as a national issue, which involves indigenous peoples from the Amazon and the re-emergence of indigeneity in the Andes. Whereas indigenous politics in the Amazon has always been explicitly ethnic, in the Andes the ethnic character is taking form again after the supremacy of political articulations around the category of *campesino*. In that sense, indigenous peoples claim their right to re-invent themselves, to be what they were, to reconstruct their past and take advantage of a present in which indigenous rights have been globalised. Yesterday's *campesinos* are becoming today's Indians. Have indigenous peoples the right to reinvention?

One answer to this question claims that the very idea of indigenous rights should not exist. Kuper (2003) argues that indigenous rights contradict the formal equality guaranteed by the democratic liberal system. In that sense, indigenous peoples would seek privileged rights over others to take advantage of the system. In Peru this argument is shared by many politicians, companies and technocrats, who argue that the search for a differential treatment derives from a political interest (Santillana, 2013).

But is there a real problem in having a political interest? One of my interviewees studied Law with me in a public university in Lima and always presented himself as '*serrano provinciano*' (born in a small town in the Andes); he was proud of knowing Quechua and to have a father member of a peasant community. During his university years, he always talked about being a politician and returning to his town to be the Mayor. However, he never presented himself as indigenous, until recently. Now he is a lawyer with postgraduate studies in Environmental Law and occupies a public position in the state and considers himself as indigenous. He comes back often to his town to construct political articulations for a future political contest and has acquired the membership of the peasant community of his father (he has that right by being son of a

comunero). He also has helped the community to negotiate with a mining company for proper compensation for a project undertaken on its land.

I asked him: why do you become indigenous now, being at the same time a well-paid state official? He answered: “Why not? Why cannot an indigenous undertake studies, be educated in Lima, work in important public offices, enjoy technology, travel around the world and still be indigenous? The problem is that people believe that an indigenous must be poor and live in his village and this is not the case”. (Indigenous interview 32, 11-06-13)

I was not surprised that he did not consider himself indigenous during our university years. He reminds me of the strong racism when he lived in Lima (and that he still suffers under certain circumstances), and that the term indigenous was not as popular as it is today. He defended the idea that he was a *provinciano* proud member of his village and he argued that today he has the right to express his indigeneity openly and take advantage of a world system that recognises indigenous rights.

In my opinion, formally, to be ‘indigenous’ is only to use a label recognised by international standards (which could be Indian, aborigine, or any other). What is important is that through this label the people who consider themselves as member of a distinct cultural heritage that “*resists to die*” (Indigenous interview 32, 27-12-13) express their indigeneity (a specific cultural identity and social system). The fact that in the past many people did not express themselves openly as indigenous but as *campesinos* or *provincianos* must not avoid the possibility for them of re-inventing themselves as indigenous.

This happens also with political organisations. The case of the National Confederation of Peruvian Communities Affected by Mining (CONACAMI) is paradigmatic. It is an Andean social movement that changed its perspective in the last years, from an environmental defence organisation to an ethnic movement, influenced by Bolivian and Ecuadorian organisations (Vittor, 2009). CONACAMI leader Palacín (2009: p. 376) argues: “we are reconstructing our identity; the name indigenous, Andean... whatever is just a juridical recognition; we are constructing an indigenous movement in Peru and this is an irreversible process”.

This right of re-invention, however, is usually denied with the argument of *mestizaje*. For example, Santillana (2013) argues that it is possible to accept the existence of indigenous peoples in the Amazon, but in the Andes all people are *mestiza* since the colony, and *mestizaje* is the general tendency for all Peruvian society. These types of arguments serve the interest of extractive activities within indigenous territories: by deleting indigenous peoples you delete indigenous rights for territorial defence.

The argument of *mestizaje* is not new. *Mestizaje* was a colonial bio-political discourse which appears as the only alternative to indigenous population to overcome their backwardness. In the last century the politics of *mestizaje* became politics of *campesinos* (for those who remained in the Andes) and *cholos* (for those who migrate to the cities). In that context, structural Marxist promoted the ‘evolution’ of Indians to become peasants and in this way to engage with modernity. De la Cadena (2005) argues that the most important epistemological opposition to this move was proposed by the indigenist writer Jose Maria Arguedas in his novel *Todas las Sangres*. He denied the

leftist and conservative projects of conceiving a single modern subject by proposing an alternative indigenous subject, which can be critically allied of the Left but without losing its own rationality. In this way he proposed an alternative political ontology and epistemology, admitting the importance of Western reason but at the same time its impossibility to completely translate indigeneity (De la Cadena, 2005).

Arguedas' ontological and epistemological struggle admitted that in spite of centuries of oppression, indigenous ontologies and epistemologies are alive and that *mestizaje* was not the destiny of Peruvian different cultures. De la Cadena (2005) has shown how even in the cases in which we can talk about *mestizo* people, indigeneity should not be displaced. *Mestizaje* from the very beginning was more complex than a biological or cultural mixture: Indian people could be considered *mestizo*, and *mestizo* people could be considered Indian; there is also a social ranking between the white *mestizo* and the Indian *mestizo* (Santos, 2010), then, *mestizaje* does not entail mixture but a new system of classification and hierarchy based on personal social relations, the identification of an ancestral, the social position or the appearance.

Therefore, *mestizaje* is more a political category than a cultural or biological one. De la Cadena (2005) talks about 'indigenous mestizos' since they articulate an identity project that does not oblige to choose between being indigenous or being *mestizos*, but to maintain indigeneity in their own way. In that sense Manuel Zapata (in Walsh, 2006) reconfigures the idea of *mestizaje* not as the erasure of the oppressed or a hybridisation, but as a political proposal of de-alienation and a decolonial consciousness inspired by the struggles of oppressed peoples. *Mestizaje*, thus, is not a negation of indigeneity but a platform in which indigeneity can still be articulated.

Therefore, the *mestizaje* argument against indigenous rights is as wrong as the argument that denies indigenous rights based on the 'equality before the Law'. This argument disregards the dispossession, violent inclusion and discrimination exerted by powerful elites against indigenous peoples (Kenrick and Lewis, 2004). In fact, the premise of this position is erroneous: we all are equal and share a similar past. That is not the case. In Peru there are different trajectories of inclusion, exclusion and exploitation and those who maintain or vindicate essential features as peoples, must have a right to be recognised as indigenous beyond the different labels historically imposed by the state's open or friendly assimilation.

In sum, the definition of the indigenous must be relational rather than essentialist (Canessa, 2012; Saugestad 2001 in Kenrick and Lewis, 2004). In this way, the focus must be on the fundamental questions of power and dispossession of those who alleged being indigenous: "indigenous describes one side in a relationship between certain unequally powerful groups of people" (Kenrick and Lewis, 2004: p. 9). Thus, to be indigenous is to be in a claimant position for justice based on a historical relation (Canessa, 2012). In that sense, Bonfil (1977) argued that the Indian category expresses the condition of the colonised and makes necessary reference to a colonial relation.

But indigeneity is not simply a historical relationship but the continuity of power relations perpetuated by coloniality. That is why Canessa (2012) argues that we should not understand indigenous peoples as 'cultural survivors', but as inheritors of a colonial situation that has continued over time. Greene (2009: p. 14) suggests that "indigeneity is not a continuous with the prehistorical past but a constituent element of the historical

present... It does not emerge as an alternative path to modernity but as a path that begins and ends with modernity”.

It is true that colonisation created the ‘Indian’ and coloniality maintains the dominance on the indigenous. In that sense, indigeneity is a product of modernity. However it is much more than that. The very difference pre-modern/modern is misleading in identifying the continuity or novelty of indigeneity. The other (the Indian, indigenous, *campesino*, etc.) represents a different historical trajectory (another modernity) that supports its belonging to a specific people. The colonial relation helps to identify or define the indigenous but does not explain the whole indigenous world that is beyond this dialectic. The representation as peoples with territories from their perspective (and not from liberal multicultural perspectives) disrupts not only the liberal capitalist logic but also modernity itself.

This does not mean that indigeneity is isolated in its own logic. It is not simply about the past. The right to ‘re-invention’ means to look to the past in order to create something new. As has been suggested by a recognised scholar and activist: “there is a long struggle that we must undertake to reform the state and recognise in all levels the existence of indigenous peoples, but at the same time the peoples have to undertake also a process of reconstitution because the violent historical processes have affected them” (Activist interview 3, 26-03-2013) . This is only possible by using legal, political and economic tools available in the current liberal capitalist context. The use of the legality, human rights discourses, the market and so forth, are ways to translate indigeneity and struggle for it today.

Therefore, past and current oppression, colonisation and coloniality justify the right to reinvention and to take advantage of the international system in order to reaffirm indigenous rights. In fact, the broad criteria established by international standards to define who is indigenous are inexorably open to interpretation, strategic use and opportunism (Kenrick and Lewis, 2004). But this fact should not delete a right of indigenous peoples to define their identity. Even more, the fact that many indigenous peoples re-invent their indigeneity responds to the globalisation of indigenous rights and discourses, and the dialogues between indigenous peoples and social movements, instead of being opportunistic or unexpected creations (Canessa, 2012). In that context, the state must be sufficiently flexible to recognise indigenous rights even in cases of doubt or ambiguity.

Therefore, indigeneity cannot be based only on history. It is a product of daily struggles and daily aspirations for a better future. In the next section I discuss the possibilities to articulate this indigeneity with the political projects of *Buen vivir* and *interculturalidad*.

8.3. Globalisation, development and indigenous peoples: the possibilities and challenges of *interculturalidad* and *Buen vivir*

Two fundamental concepts related to the possibility of state transformation emerged with the *Baguazo*: *interculturalidad* and *Buen vivir*. *Interculturalidad* has been assumed in public policies, whereas *Buen Vivir* is being mostly formulated by indigenous movements. Both of them could articulate political discourses and platforms for discussing the possibilities for indigenous self-determination and territoriality. However, ideological and material constraints become important barriers to the implementation of these two fundamental principles.

8.3.1. *Interculturalidad* among indigenous peoples, the state and companies

As I explained in the previous section, the recognition of indigenous rights is very contentious, and this complexity is translated in the different processes of *interculturalidad*. Therefore, *interculturalidad* has the potential to be a mechanism to articulate indigenous politics, but at the same time it could be used to erase indigeneity.

It is important to note that an intercultural dialogue must also be deployed among indigenous peoples because of the plurality of interests and views even within indigenous movements. In this sense, it is interesting to observe the alliance between Andean and Amazonian indigenous peoples in the context of the *Baguazo* and after it (Rénique, 2009). Historically, the relation between indigenous peoples from the Andes and the Amazon has been tense, but the emergence of a global indigenous politics is facilitating the articulations between different indigenous movements.

Thus in March 2011 the Pact of Unity of Indigenous Peoples Organisations of Peru was created. This Pact of Unity is composed by seven national organisations: AIDSEP, The Agrarian National Confederation (CNA), the Peasant Confederation of Peru (CCP), the National Organisation of Andean and Amazonian Indigenous Women of Peru (ONAMIAP), the Union of Aymara Nationalities (UNCA), the National Federation of Peasant and Indigenous Women of Peru (FEMUCARINAP), and the National Centre of *Rondas Campesinas* (CUNARC).

In its last public declaration (April 2013), the Pact of Unity declares the necessity to construct a real indigenous institutionality in all the state levels with the creation of a Ministry of Indigenous Affairs that ensures indigenous representation. In addition, they propose “*a new Political Constitution that recognises the plurinational character of the Peruvian state... that the state recognises the rights, knowledge, culture, territories and self-determination practices of the millions of Peruvians who consider themselves as part of indigenous peoples*”.

In this declaration also the Pact of Unity reaffirms its commitment to “*consolidate a space of articulation of national indigenous organisations... and the strength of local and regional organisations, vindicating the role of the communities, protecting ancestral knowledge, our history, and our identity with the aim of advancing in the process of unity of the Andean-Amazonian peoples*”... It is possible that many tensions emerge within this process of national political articulations among different indigenous

peoples; nonetheless, there is a genuine interest of many indigenous organisations to undertake intercultural dialogues among them and propose a new political scenario.

Regarding the possibilities of *interculturalidad* with companies and the state, it must be noted that indigenous peoples do not live their self-determination isolated from the market and the state; they have different degrees of autonomy according to their specific context. In the case of the Awajun, they seek to commercialise their products in local and regional markets; they engage everyday with NGOs, the church and state social programs; they negotiate with oil and mining companies. There are also Awajun who participate in political life and occupy local and regional state positions.

All of these interactions cannot deny their self-determination as everyday life experience and as political project. On the one hand, many Awajun (and others indigenous communities) exert their cultural rules and traditions on their communities; they also exert dominium on their territory; on the other hand, the economy, the legality and the political systems are means by which they mediate their aspirations and in some cases contradicting visions. Regarding the mediation with companies, a young Awajun student of Political Science argues:

“Not all the time we must negate negotiation... we can play the game with their rules but in our field, we can be active, not passive, partners with companies... *The issue to be partner is not to earn money; it is that they allow us to administrate, to defend our territory, a space for self-government. ... Indigenous peoples want to enter into the system to change it, to stop extractivism, that is why peoples talk of territory, not of land*” (Indigenous interview 2, 20-10-2012).

In the encounters between indigenous peoples and companies; and indigenous peoples and the state, it is very important to distinguish between mediation and *interculturalidad*. The mediation is a process by which indigenous peoples use the tools available in the context to express their needs and aspirations: it could be an administrative office, rights or political discourses, a financial agreement and so forth. *Interculturalidad*, in contrast, is the principle and process by which two different subjects or groups of subjects with different cultures can negotiate or articulate their needs and aspirations without assimilating one to another or losing their identity. The mediation is then a visible and external aspect of a whole process of *interculturalidad* in which indigeneity and its principles of territoriality and self-determination are often non-negotiable.

The repetitive denial of indigeneity based on the argument that indigenous peoples become completely ‘modern’ in liberal and capitalist terms, responds to the confusion between mediation and *interculturalidad*. Thus, from a company point of view, indigenous negotiation with corporations make them capitalists; from liberal activists, indigenous use of human rights discourse make them liberal; Hernando De Soto has argued that indigenous use of property for territorial defence makes them potential entrepreneurs. The problem is that these accounts only observe a very superficial and visible aspect of the interaction, but not all the deep thinking that is behind it.

For that reason, we must be alert of what Vázquez (2011) calls the problem of intercultural translation as erasure: by this operation everything that is not visible to the standards of legibility of modernity is deleted, and in this way the intercultural dialogue

becomes a specific instrument for coloniality. For instance, Vázquez (2011) argues that when indigenous peoples in Chiapas talk about *tierra*, they do not refer to a specific measurable or quantifiable plot or a commodity, but a notion that embodies a cultural heritage, then, the defence of *tierra* is not based on an economic proprietary interest, but on the protection of an identity.

It does not mean that some indigenous might really want to be liberals, capitalists or entrepreneurs. In some areas there is evidence of entrepreneur rationalities among *comuneros* (Diez, 1999). But this is result of the different historical processes, the complexities inside a people and their contradictory views. What we should not do is to represent similarly all indigenous peoples without analysing their underlying aspirations. As Espinosa has showed (2010), the changes on indigenous claims do not usually refer to a modification of a conception they have on their territories, but in the form of vindicating their rights on them. Even in cases as the Ashaninkas in central jungle, in which a conception of law associated to the market has been introduced, the majority of ashaninkas “continues to radically oppose to private property as an alternative to communal property of ancestral territory” (Espinosa, 2010: p. 255).

It is important also to note that the mediation does not lead to a sort of hybridity. Thus, the recognition of the rights of Mother Earth or the principle of *Buen vivir* in the Ecuadorian constitution does not mean a ‘conceptual *mestizaje*’ between the modern world of rights and the Andean world of *Pachamama* as proposed by Santos (2010), but the use of a legal device and discourse of rights (the constitution as a means) to express the indigeneity.

Another problematic aspect of the mediation and the intercultural dialogue is the winners and losers of the negotiations around the implementation of extractive activities within indigenous territories. Mining company workers, urban population and businesses benefit the most, while in rural areas the situation is the same or worse, the peasants are the most affected (Zarate and Durand, 2005). After the process of negotiation by which native people are relocated, many people suffer because they cannot qualify for micro enterprise companies, and they cannot work in the mine because they do not have any degree of training. The poorest relocated families are condemned to live in poverty in the city (Zarate and Durand, 2005).

Another issue is that the intercultural dialogue is developed in a context of different knowledge and power. As is expressed by a state official in charge of indigenous affairs: “*they lack technical capacities..., I meet up with many indigenous leaders, they are good and polite people but in technical terms, they have no possibility of obtaining something from the state with face to face negotiations because they do not know the instruments that the state uses for its management and do not know how to interpret the norms. This is a deep problem, it is important to think in a real indigenous institutionality that represents them*” (State official interview 8, 13-06-2013). There is then a trap when an intercultural dialogue ensues between indigenous peoples and companies and governments. Indigenous peoples are usually misunderstood and enter into a tragic path of dispossession.

The political system is also a platform for mediation between indigenous peoples and non-indigenous political actors. In this scenario very critical issues that deny any attempt of serious *interculturalidad* emerge. The elite politics essentialises indigenous

politics as anti-mining and anti-development. In his article “The Dog in the Manger against the Poor” (2008a), President Garcia argued: “*Now that the battle is not more economical because the world crushed the dog in the manger in this issue, he appears as pluriculturalist, patriotic and anti-mining*” (a4). Garcia claimed that environmental activists allied with indigenous peoples are strongly influenced by radical Marxist politics.

However, the idea that indigenous peoples are influenced by a Marxist-Left is something that indigenous peoples have strongly rejected. In response to Garcia’s affirmations, ex-AIDASEP president Gil Inoach (2009 in Stetson, 2012: p. 89) argued that indigenous notions of development are “not marked by Western philosophers.” In fact, he says, “for indigenous peoples scientific and utopian socialism does not exist... proletariat’s claims usually refer to improving of salaries and working conditions, not to secure territorial rights which is the core of the indigenous agenda”. Similarly, a regional Awajun leader (Indigenous interview 28, 15-04-13) rejects that people blame him for being Left radical: “this is not the case, what I claimed is that there must be consultation and respect to our culture”. Another Awajun argues “indigenous peoples do not care about ideology, what is at stake is the conservation of the environment, life, territory” (Indigenous interview 2, 20-10-2012).

The possibilities of *interculturalidad* depend on the capacity of ending the essentialisation of indigenous peoples as Left radicals or anti-mining. There is obviously a similarity between Left struggles and indigenous struggles, as suggested by one Awajun indigenous leader: “fundamental principles of the Left (the rejection of neoliberalism) can be made compatible with indigenous fundamental principles” (Indigenous interview 7, 08-04-13). However, indigenous politics is much more complex because it has been marked by a violent history of exclusion and inclusion based on liberal capitalism and modernity paradigms. That is why it is equally important to have an intercultural dialogue between indigenous movements and other social movements in order to avoid the assimilation of the indigenous agenda into other political agendas with the argument that all social movements involved in the struggles against extractivist policies represent a new alliance against neoliberalism (Rénique, 2009).

The struggle of indigenous peoples certainly influences capitalist expansion but it is much more than a response to neoliberalism. It is about the constant colonial aggression against indigenous territories based on a one-dimensional political ontology and epistemology. That is why De la Cadena (2008) argues that the current indigenous protests could foster the pluralisation of politics. This pluralisation goes beyond the indigenous social and political inclusion; it entails the expansion of the political: the usual liberal capitalist political reality is forced to expand itself to include other political ontologies that, paradoxically, would radically transform it. This expansion of the political spectrum depends on the capacity of indigenous peoples to articulate their aspirations and to propose policies for their *Buen vivir*.

8.3.2 Rethinking *Buen vivir* in the Amazon

One of the most important promoters of *Buen vivir* in Peru has been Grimaldo Rengifo, head of The Andean Project for Peasant Technologies (PRATEC), an NGO focused on the diffusion of Andean ancestral knowledge. Grimaldo asserts that PRATEC wrote a study at the beginning of the nineties in which proposed *Buen vivir* as an alternative to development (Activist interview 8, 21-05-2013). Today, the notion has been strongly developed in the contexts of Bolivia and Ecuador (see 4.3.3), and it has been translated to the Peruvian Amazon. Indeed, Amazonian indigenous peoples are articulating their political aspirations through the idea of '*Tajimat Pujut*' (*Buen Vivir* in Awajun) or '*Kametsa Asaike*' (*Buen Vivir* in Ashaninka).

For one Awajun leader (Indigenous interview 7, 08-04-13) there is a clear contradiction between *Buen vivir* and extractivism: "*The government prefers companies' concessions because there is an 'economy', they believe that without extraction there won't be development. This is very different from the 'buen vivir amazónico', our ancestors lived without raw material exploitation*". For another Awajun (Indigenous interview 14, 10-04-2013), it is not possible to obtain *Tajimat Pujut* by exploiting natural resources, destroying forests, polluting the water. He related a compelling story in which companies and public servants brought one Awajun leader to Lima to convince him that extractive companies would foster development by exploiting natural resources: "*The Awajun asked: I would like you show me just one developed city to have a model of how we should be. Then, someone answered: 'the city of Lima is developed' and the Awajun responded: ... In Lima I see that all days people are killed, I have seen landfills..., robbery, there is not pure air ... I don't want that kind of development for my people*".

Buen vivir takes form according to indigenous peoples' historical trajectories. One Awajun asserts that the way Awajun develops has changed; in the past, it was about acquiring the power of *ajutap* to have the maximum force: "a clean house, healthy kids, and so forth. But with *interculturalidad* it has changed towards a syncretism between the Awajun and Hispanic culture, then *indigenous peoples are trying to prepare academically, we can diffuse to the world our culture, to say that we are not wrong with our cosmology*" (Indigenous interview 8, 09-04-13).

Indeed, this syncretism entails using others cultural and legal devices to translate their own culture and forging an aspiration. Many of the indigenous peoples I interviewed used the term *Buen vivir* to describe a discourse that is engaged in an emerging political agenda. Beyond rhetoric, *Buen vivir* can be a powerful discourse for social change, which is the reason for the Western attention to the concept. The problem is that this political agenda is very local, as explained by Grimaldo (Activist interview 8, 21-05-2013): "*there is not abstraction about Buen vivir, it is very local, and it is right now... for example, the way of cultivating in winter is different from summer... there is no eternal path, there are things embedded in local and circumstantial realities. Therefore, there is not a Buen vivir for all, each one has its own*".

In spite of the local projection of *Buen vivir*, the Coordinator of Indigenous Organisations of the Amazonian Basin (COICA), which represents national organisations of all Amazonian countries, has elaborated its '*Plan de Vida*' in 2005, called 'Amazonian indigenous agenda: returning to the *Maloca*'. This agenda emphasises the right to territory and self-determination without affecting national

sovereignty. It entails the right to influence and control what occurs within indigenous territories and to participate in decisions that affect those territories. It also entails the respect of indigenous norms, customs and tradition, to guide and administrate the economy and the distribution of wealth and natural resources exploitation, and to protect the ecological equilibrium (COICA, 2005). Likewise, AIDSEP is elaborating a comprehensive vision of *Buen vivir* for all Peruvian Amazonian peoples through a Plan of '*Vida Plena*' (Plentiful Life). Similarly, in a public declaration of the above-mentioned Unity Pact (April 2013) it was asserted: "*We will reinforce our work oriented toward our Strategic Plan and we will establish strategic alliances at national and international level that contribute to achieve our paradigms of Buen vivir and Plentiful Life of our peoples*".

These plans especially focus on the regions inhabited by indigenous peoples, but they contain also national implications by emphasising an indigenous institutionality in the state, the recognition of territoriality and self-determination. As the implementation of these measures would contradict the state logic of aggressive promotion of extractive activities as seen in the previous chapter, it is necessary that *Buen vivir* presents also an alternative and feasible political economy. Indeed, it could be articulated with the economic strategies of the post-extractivist agenda. In Chapter 4, I developed the concept of post-extractivism and its general features in Latin American countries, now I would like to analyse the connections between this project and the indigenous peoples' views on the economy.

In Peru the consolidation of extractivism has been supported by an 'inevitability' argument in the state and private sectors by which extraction is the only path to development (Urteaga-Crovetto, 2012). This view is contested not only by intellectuals, but also by indigenous peoples. An Awajun claims "*without natural resources exploitation it is argued that Peru is broken. We are indigenous and ask: Where is the development of our people after decades of exploitation? In all areas of exploitation the minority is benefited and the majority is worse: the rivers, land, environment is polluted...*" (Indigenous interview 9, 09-04-13).

Amazonian indigenous peoples value their biodiversity as mechanisms for overcoming extractivism. Thus, one indigenous asserts: "*Why are these spaces of land biodiversity not taken as alternative to oil and mining extraction? ... The state has not clarity. We propose environmental services, eco-tourism...*" (Indigenous interview 18, 12-04-2013).

For Gil Inoach (Indigenous interview 1, 17-10-12) nobody completely disagrees with mining, but it must be made in places where environmental impacts can be mitigated, but not in river sources; besides, he proposes: "*Not only of mining is possible to live, it is possible to live of environmental goods and services that ecosystems provides to the humanity. The country has to be visionary in that sense and it must not only be based on primary exportation; it is just a short term-vision*".

The term 'vision' is again important here but not as a collective vision of the Awajun, but as a vision that might be assumed by the state and that can provide hope to humanity. This proposal is powerful because it entails an inversion of the political imagination: the question is not how to include (integrate, assimilate or accommodate) indigenous peoples into the state liberal capitalist logic, but how the state can engage with the indigenous vision in order to transform itself.

But, is this vision possible to implement in a context of aggressive extractivism? For some authors, in Peru it seems to be a transition from a neo-conservatism of President Garcia (2006 – 2011) to a neo-extractivism of President Humala (2011 - 2015), who was supposed to initiate a post-extractivist era (Pajares et al, 2011); for others, Peru still promotes a market extractivism (Azpur et al, 2011). It seems better to characterise Humala's regime as neo-extractivism since it has made some relevant changes at the beginning of his presidential period (increment of taxation for mining, reinforcement of the environmental and indigenous institutionality). However, in spite of the initial optimism, today there is no space for post-extractivist strategies in the state, on the contrary, there is an accentuation of extractivism.

Thus, for De Echave (2011) Peru still exemplifies the 'predator extractivism' (see 4.3.4), then, it is crucial to initiate a transition. It entails, firstly, to break the current prevalence of self-regulation mechanisms, such as code of conducts and social responsibility instead of command and control (De Echave, 2011). Francke (2009) proposes more state participation in the mining sector through public and public-private partnerships companies, even with the participation of subnational governments and communities. Other proposals (Azpur et al, 2011) include a new institutional framework for extractive activities in order to consolidate independent institutions for environmental certification and controlling; empower local and regional governments to rule the extractive sector in their areas with competences on territorial management (ecologic zoning); designing and implementing a new strategy which prioritises renewable energy; a new policy of mining concessions to suspend the mining claims, reviewing the concessions already provided, and establish a windfall tax.

One important issue is the feasibility of post-extractivist strategies. In this regard, Sotelo and Francke (2011) have evaluated three scenarios: 1) Total closure of mining, oil and gas industries; 2) Suspension of mining, oil and gas projects that initiated their operations between 2007-2011; 3) Suspension of mining, oil and gas projects that initiated their operations between 2007-2011 and application of windfall tax. Whereas the first measure is unsustainable because of the huge losses derived from economic dependence, and the second would mean a major loss, the third scenario would be 'technically' possible to apply without compromising the macroeconomic stability. In that sense, post-extractivist strategies can support the concretisation of *Buen vivir* aspirations. Indeed, foundational rights such as territoriality and self-determination and indigenous environmental concerns could be complemented by a post-extractivist political economy.

8.3.3. The challenges of *Buen vivir*: Exception, violence and the political economy

In the scenario in which *Buen vivir* and the post-extractivist project would be articulated in order to present specific policy proposals, there would be two huge challenges: national and international structures (law and economy) embedded in extractivism; and ontological and epistemological perspectives of policymakers embedded in the colonality of knowledge and being.

Regarding the first point, the Law is at the same time the saviour and hangman of indigenous peoples' aspirations. Indigenous peoples have appropriated the Law in order

to maintain their legal system but the Law (which is a Western, modern and capitalist Law), establishes legal devices directed towards perpetuating the dispossession mechanisms under the requirements of the 'nation'. Perhaps the most important of these legal devices is the 'exception' that can be articulated in two ways: exception to exploit natural resources within fragile ecological areas and indigenous peoples' territories, namely, exception in a context of legal regulation; and the exception to impose the rule of Law by direct violence under the context of protests: *the state of exception* entails a context of lack of Law.

But there are other devices. When the Law is embedded in the capitalist logic it becomes very flexible for companies and very inflexible for citizens. Flexible environmental laws allow resource exploitation without proper social and environmental conditions and the transfer of externalities to local peoples. Flexible laws also allow companies to hire private security to injure 'anti-mining' protesters. Palacios (2009) asserts that the security company FORZA S.A has signed more than 100 contracts at national level with mining, telecommunication and financial corporations, and this company is associated with death blackmail, defamatory campaigns and monitoring in what has been called "*Operación Diablo*" in 2006 against the activist Marco Arana and members of Grufides (an NGO for environmental defence). Other important cases of kidnapping of *comuneros* by private forces have been denounced in the case of the opposition to the Majaz project (Palacios, 2009).

These laws and regulations respond to a 'nation', assumed to be a unity which requires structural and institutional force (the state) and a locus (the territory) to ensure its unity and stability. The problem is, however, that the nation represented in laws and the constitution is indeed a 'dominant nation' that has historically attempted to exclude or include the indigenous nations. The state and its legal devices have had exactly this role.

This legal and political structure is deeply embedded in the political economy of extraction; this is reason why any attempt to undertake reforms within the state is very problematic. A state official argues that "*whereas the state does not change its conception of what we sell to foreign markets, we always are going to be pro-businesses*". This interviewee adds that it does not mean that we must stop being pro-businesses immediately because "*we have to sell something to survive but at least there should be clear environmental rules*" (State official interview, 3 24-10-2012). Another state official who is very influential in the environmental sector argues that the state pro-business approach "*is like this and always has been like this, all the productive sectors, including agriculture overcomes the Ministry of the Environment*" (State official 5, 10-05-2013). This is reaffirmed by a high functionary at the Ministry of Energy and Mines "*if you do not use the mining and energy accumulation mechanisms, then, what is your development proposal? Are you going to live from milking cows? That is ok but this is not enough...*" (State official interview 6, 22-05-2013)

In these views there is an underlying argument about the inevitability of extractivism, which has as a consequence the maintenance of very flexible regulations to allow its development. I could observe in some state offices how this argument is deeply related to international economic structures and the global governance in which the rankings of pro-businesses countries, economic growth and bond credit, among others elaborated by the World Bank and other international financial institutions strongly guide the policy-makers in charge of developmental policies. This global structure also allows

transnational corporations such as the American Doe Run or the Canadian Bear Creek Mining to sue the Peruvian state in International Arbitrations with millionaires' legal claims under 'guarantee investors clauses' established in the Free Trade Agreements celebrated with the United States and Canada. According to these clauses, the state cancellation of licenses because of very poor social and environmental conditions will give the right to companies to sue the Peruvian state. The case of Doe Run is significant because the company had broken its environmental obligations for several years (De Echave and Gómez, 2013).

However, as discussed in Chapter 2, the strength of globalisation is expressed not only as the governance of global rule-makers or the imposition of imperial rules and designs through global and local elites. The normalisation of the international system entails the functional connection between the hegemony of a global political economy and the denial of any value of non-Western political ontologies. Behind the state technocracy and its international connections, behind this governance of policymaking without politics, there is very crude politics of indigenous' denial. For instance, one indigenous state official in Lima explains the power of race and racial rankings within the state in the fact that it is always easier for elite white people to occupy high technocratic positions than for non-white people with similar or better qualifications (Indigenous interview 32, 27-12-13). In addition, I could observe how in some state offices, the Indian is conceived as an obstacle for the '*fast and sustained economic growth*' needed for the '*development of the country*'; and how it is normal for some state officials to talk about the 'natives' or the 'Indians' as ignorant people who need to be civilised.

Thus, the underlying developmental paradigm in Peru can be summarised in the statement: 'fast and sustained economic growth' which means indeed "to do the major possible extractivism in the shortest time" (De Echave Interview, 02-05-2013). This paradigm is not only sustained in national and international structures but also in the dialectical construction of the other as the non-modern, the primitive, the old and rural that portrays the past and that must be overcome. This is coloniality in all of its dimensions: the legal and economic aspect or the regulative aspect that expresses national and international extractive structures; and the epistemological and ontological aspect that expresses the universal principles of Western modernity.

This politics of the most technocratic state offices is a paradoxical short-time politics or a short-term vision (Gil Inoach interview 1, 17-10-12), with a long history of coloniality. As an important activist and scholar argues: "*this is a political economy seen from the narrow horizon of the today and the necessity of money to maintain the power... There is no reason to push processes that will be undertaken in terrible social and environmental conditions; it is possible to exploit oil in 30 years with better conditions*" (Activist interview 3, 26-03-2013).

Thus, whereas indigenous politics could be represented – paraphrasing a classical Silvia Rivera analysis (2010) - as a long term politics which entails the pre-eminence of a long memory (anticolonial struggles, pre-Hispanic order) over a short memory (peasant revolts and agrarian reform in the sixties); many state officials and technocrats (and some activists as well), in contrast, associate indigenous politics with the agrarian reforms of the sixties and claims for statism and land redistribution which today would mean under-development. Thus, this short memory (the fear of state intervention in the market) and short-term politics (the undertaking of a strong extractivism to obtain fast

economic growth) seems irreconcilable with the long memory (a history of coloniality) and long-term politics (with strategies such as integral territory).

In this context of contrasting views of time and space sustained in different ontologies and epistemologies, is there a hope that the state implements the *Buen vivir*? Is the strategy of some indigenous leaders and activists to access state positions still useful? An important scholar and activist asserts that the result of this is not promising: “*In some municipalities there have been important achievements but in other areas it has been a disaster. For example, in the Ministries – with the exception of the influence of decisions to some officials – I do not see major achievements because if there is a more serious or constant resistance, everybody is fired*” (Activist interview 3, 26-03-2013).

Other activists who have occupied important roles in the state have a most optimistic view: “*One cannot enter to fight, you cannot enter just ‘against to’ but with an alternative proposal... This is a strategic position; you are not going to fight with the Ministry of Economy that finances your office...*”. It is also true that there is certain plurality within the state that allows some progressive moments because “*the state has not a monolithic thinking*” (State official 7, 24-05-2013). The problem is that this last interviewee who highlighted the plurality within the state was fired a few months later because of the contradictions between the Vice Ministry of Intercultural Affairs and the most powerful Ministry of Energy and Mines.

As discussed in Chapter 2, an important segment of indigenous movements is beyond the two usual strategies of radical autonomy and counter-hegemony. The political aim of most indigenous peoples is not solely to be part of the state or to be isolated from it in search of their self-determination. They seek a productive interaction with state politics from outside and inside in order to foster their foundational rights. The state is a locus for negotiation such as argued by Gil Inoach (Indigenous interview 1, 17-10-12).

Furthermore, this constant struggle inside and outside the state is particularly important because, as we saw, the state is embedded in a national and international logic of coloniality. Thus, the engagement of indigenous peoples in processes which only entail the occupation of the state would reproduce the logic of coloniality (as in the current cases of Bolivia and Ecuador) if there is not a broader horizon beyond the state.

8.4. Local struggles/global utopias: Inverting the political imagination

The *Baguazo* opened a space to rethink the boundaries of the political in national and international settings. As the indigenous struggle in the Amazon was not conceived only as an indigenous issue due to its deep relation to ecological concerns and social justice, it was assumed by different local and global activists. Indigenous politics, thus, has the capacity to articulate different social struggles of those dominated by the legal and economic arrangement and ontological/epistemological principles of coloniality.

Indigenous peoples engage in politics inside the state (through official institutionalised mechanisms such as political contests, the acceptance of state positions or litigation), outside the state (through non-institutionalised politics such as protests and demonstrations) and beyond the state (with the engagement in the two previous

mechanisms at international level). This very rich politics is each day more relevant, and for many global activists and scholars it is the basis for overcoming the injustices of capitalism. But, how could the very local struggles which are embedded in specific histories of coloniality and different historical processes transcend themselves to advance their agenda of self-determination, and at the same time shape a global utopia for today's world?

The global and plural character of indigenous politics is not new. As De la Cadena and Starn (2007) asserts, indigenism has never been a unique or isolated movement, on the contrary, it has been very complex and cosmopolitan. Similarly to Guamán Poma in Colonial Peru, Maori reached out to the monarch (British queen) denouncing settler abuses in the 19th century. Today many local and indigenous communities affected by mining and oil extraction, with the impossibility of obtaining justice in their countries, recur to the courts of United Kingdom or the U.S. or to international courts of human rights to demand respect for their rights. This international activism in which several non-indigenous actors also participate has contributed to the complex and relational formation of indigeneity.

Indigenism is also a political process formed by power structures, alliances, discourses, contradictions and aspirations. That is why De la Cadena and Starn argued (2007) that indigenous activism is an unavoidably fragmented process; thus, some of its elements are absorbed by hegemonic practices and discourses, others occupied counter-hegemonic spaces and others both of them or move from one to the other. The *indio permitido* policies and laws or current consultation devices are examples of this indigenous appropriation by those in power.

What it is important to note is how the discourse of political protest is being indigenised in Latin America (Canessa, 2007), not only because of the reinvention of indigeneity by *mestizos* or *campesinos*, but because of the solidarity with indigenous claims by non-indigenous people. In the Amazon, many settlers supported the indigenous claims during the *Baguazo*, and during my informal conversations with locals in *Bagua* the general feeling was that indigenous peoples have the right to defend their territories against pollution and companies. In a way, people were self-identified with the indigenous agenda, certainly because of an environmental concern (expressing what Martinez-Alier calls the environmentalism of the poor, and Laura Rival names the environmentalism of the people), but also because they shared a most profound feeling of social justice.

In that sense, Canessa (2006) argues that indigeneity is itself transforming into an inclusive signifier for social justice against globalisation forces. Indeed, indigenous peoples *represent* the opposite to capitalist values: ecological consciousness (in contrast to rampant predation); local economies and practices (in contrast to global scale economies); territorial and located identities (in contrast to de-territoriality and multiple identities). But it must be clear that this is a *representation*, it is not an attempt of describing supposed good indigenous practices (as the portrayal of the 'noble savage'), but to reaffirm indigenous principles and aspirations.

Thus, indigenous leaders such as Morales do not claim an indigenous essentialism, but an indigenous positioning: "indigenous peoples, because they have been excluded from the processes of colonisation and globalisation, are in the best position to develop

critiques of neocolonialism and globalisation; and indigenous people, because they have been historically excluded from the nation state, are in the best place to understand other peoples' exclusion, be they workers, women or other political minorities" (Canessa, 2007: p. 230).

This inclusive indigenous discourse is being globalised, becoming a global field of governance, subjectivity and knowledge production and politics which involves both indigenous and non-indigenous peoples (De la Cadena and Starn, 2007). *Buen vivir*, for example, has been circulating among indigenous peoples who have re-invented their ancestral features and redefined their specific political agenda, and to marginalised groups who have also redefined themselves as indigenous in a strategic way for rights' recognition (Canessa, 2007).

Therefore, beyond the *Sumac kawsay* and *Suma qamaña* of the Quechua and Aymara, or the *Tajimat pujut* and *Kametsa asaike* of the Awajun and Ashaninka, there are other articulations among indigenous peoples, for example, the *shiir waras*, the *Buen vivir* of the Ecuadorian Achuar or the *küme mongen*, the *Buen vivir* of Chilean mapuches means a domestic peace and harmonious life, including a state of equilibrium with nature (Gudynas, 2011). In addition, there are non-indigenous groups who have their own view of *Buen vivir*. For example, the Amazonian *cambas del bosque* of northern Bolivia defend 'life with tranquillity', emphasising safety, harmony and happiness from an identity strongly rooted in the jungle (Gudynas, 2011). Others have highlighted that in Western circles there are voices related to the *Buen vivir* as Feminist Ecology (Acosta, 2010; León, 2011; Houtart, 2011).

In that context, indigeneity is not only able to emerge in the *mestizo* subject; it can also go beyond indigeneity itself. Canessa (2006) shows how an inclusive view on indigeneity is emerging by quoting Gualberto Choque, Executive Secretary of 'Tupaj Katari', the Unitary Departmental Federation of Peasant Workers of La Paz: "Not all white people live well. Some [poor] white people live here. White people and black people and we the Aymara people, we will all unite. Once we unite in this way there will be one great way of thinking; and that is what we will call indigenous" (p. 256). Here *mestizos* or white people are not appropriating indigenous discourses; on the contrary, an indigenous leader is offering indigenous principles to be shared to other oppressed sectors.

Thus, indigenous activism has the potential to articulate projects for social justice beyond exclusive notions of ethnic identity (De la Cadena and Starn, 2007), showing the "centrality of identity production in building global alliances to resist global processes of dispossession" (Kenrick and Lewis, 2004: 9). Anibal Quijano sees this trend in the Zapatista movement that has been able to "subalternizing indigenous politics and indigenizing subaltern politics" (Quijano, 2006 in De la Cadena and Starn, 2007: p. 11).

This trend would be able to confront global coloniality. The different social movements would undertake an intercultural translation which entails a trans-modernity in which even Western movements detached from the dark side of the Western reason could participate (see 2.3.3). But what are the limits of this indigenisation of politics? Some decades ago Varese and Terrientes (1982) explained that a real process of decolonisation has to be global and absolute because the reality that it confronts is a

totality; for that reason there is no other way than eliminating the social, economic and political structure that allows the system's reproduction. This would be possible because these authors found a communality which underlies all ethnic groups and liberation movements and that transcends local ethnic consciousness.

Even though the authors recognise that the problem is 'global' and 'absolute' they ended up with a proposal very similar to Mignolo's pluriversality (see 2.4.1). As for Varese and Terrientes (1982) unity does not mean uniqueness, the only future possible is one in which there is a recognition of "the multiplicity as the framework of knowledge and of existence and the interaction of the differences" (p. 40).

The other side of the global Indian project was proposed also some decades ago by Bonfil (1977). According to him, the indigenous category entails necessarily its opposition: the coloniser. The Indian does not exist in him or herself, but as part of a dialectic relation, whose overcoming (the liberation of the colonised) would mean the disappearance of their own indigeneity. Namely, the overcoming of power structures would not imply a 'multiple' world but the disappearance of the indigenous. It is similar to the Hart and Negri proposal (see 2.4.4): the anti-globalisation struggle is an anti-identity struggle; it entails the elimination of all identities, hegemonies and dominance. If the political subject lacks an identity (if indigeneity becomes an open signifier) it can be possible to overcome the power in absolute terms and to obtain true autonomy.

It seems very difficult to choose between a utopian pluriversal world project in which different identities would coexist in a unique social and political structure, and a universal project in which all identities are dissolved with the aim of an absolute and universal social transformation. Regarding the constitution of a pluriversal world, the problem of a dominant global political economy will always remain. In this world order, indigenous isolated claims as well as environmental demands are easily adapted and commodified becoming complements of the capitalist logic (participation, consultation, carbon markets, etc.).

Regarding the dissolution of indigenous identities, if indigenous politics transcends the dialectic by which it has to be either included or excluded, if the construction of the 'indigenous' was a construction over a superficial part of a much richer ontological and epistemological experience, it is a mistake to think in the inclusion of all the non-indigenous in a complete anti-identity project or the rejection of all the non-indigenous in an absolute identity project because this pretension is as utopian as the pluriversal one. Most indigenous peoples are *peoples* in political terms, and they enter in the political field (understood in broader terms), first of all, to defend their rights as peoples, and then they offer their principles for facing world crises. This process does not mean dissolution but a strategic construction of alliances to foster their agenda and a solidarity move towards other struggles.

It is beyond the aims of this thesis to propose a specific solution to overcome the flaws of these two projects, or to predict how the world would be in the next years. What I would like to highlight is the potential of indigeneity to rethink the boundaries of the current political imagination. The indigenous agenda could provide hope and inspiration by proposing indigeneity or *Buen vivir* as a political platform, not to be converted into empty signifiers, but a space for solidarity among indigenous peoples and social movements. This process could help to rethink and reshape actual systems of power and

domination: not as a dogmatic formula, but as a space for political articulations to discuss liberal capitalism and modernity paradigms. What would give form to this platform is a new political vision inspired by indigenous politics. I myself use the term 'vision' inspired by the Awajun way of obtaining power and searching for the future.

I explain this vision in the following terms: All the encounters with indigenous peoples, the negotiations, mediations, recognition of rights and so on, have been marked by the permanence of coloniality in subtle and non-subtle forms. State and international structures and ways of thinking remain embedded in the logic of constructing dialectically the other as someone who has to be either included or excluded. The overcoming of this dialectic enlarges our political imagination and entails this new 'vision'. A vision that is personal, that can become local, regional, national and even global: the inversion of the Western political reason by transcending this dichotomy. Thus, the enlargement of the political means an inversion of the political imagination by accepting an ontology and epistemology in which indigenous peoples are not ethnic minorities but 'nations', their land rights are not property rights but 'territorial rights', some territories are sacred, the economic relations are not led by profit, solidarity is a norm not an exception and the natural environment is respected as a human being. Indeed what is changing are the priorities of the political space; it would foster a new political imagination, paraphrasing an Awajun statement: 'we enter into the political in order to change it'.

This could give a profound meaning to the notion of 'foundational rights' advanced in this thesis. It is not only a foundation of an indigenous political order; its insertion in the nation-state could transform it, founding a new national order, and the transformation of new national systems could entail the transformation of international relations. Thus, the foundational rights could have local, national and global implications by inverting the political imagination.

This inversion of the political imagination must start by questioning many truths. If frequently the state and global centres of power cannot impose huge mining projects, development projects or pro-extractive legislation, it is maybe because all their paradigms have been wrong. Perhaps their mechanisms of consultation, participation, transparency, distribution are not what we need after 500 hundred years of colonisation. Maybe the dominance of the extractive governance over the politics of the people is not what will solve the profound racism, dispossession and slow violence against indigenous peoples and their territories.

Perhaps what the global and national rule makers could do is to invert their priorities, to see beyond the dialectic modern/ pre-modern and observe how the global future is located in the past, in the local, in the non-institutionalised. This inversion of the political imagination that entails reshaping our political and economic relations with indigenous peoples is with no guarantees as Stuart Hall used to say, but it also could be an opportunity for a better world.

8.5. Conclusion

In order to analyse the potential and limitation of indigenous politics in the search for the consolidation of its political agenda, it is important to analyse the politics of indigeneity which involves the politics of the term 'indigenous', the politics of *interculturalidad* and *Buen vivir* and the political articulations among indigenous peoples and non-indigenous peoples directed to enlarge the political.

The term 'indigenous' hides a very political contention between those who wish to re-invent their indigeneity and those who attempt to eliminate any indigeneity. I suggest that all indigenous peoples now labelled as peasants or any other label have the right to re-invent their indigeneity in a context of indigenous rights' globalisation. Likewise, the *mestizos* whose indigeneity has been denied with the argument of 'mixture' have also the right to enact their indigeneity because a correct understanding of *mestizaje* cannot mean the elimination of identities but the possibility to express the indigeneity and become indigenous *mestizos*.

The politics of the term indigenous becomes national with the politics of *interculturalidad* and *Buen vivir*. The intercultural dialogue is firstly undertaken among indigenous peoples because the peoples have different views, emphasis and political projects. These articulations can be observed in the Pact of Unity that encompasses indigenous peoples from the Andes and the Amazon. Then, the intercultural dialogue entails an interaction with the state and companies but this interaction cannot imply the erasure of indigeneity but the possibility of implementing the *Buen vivir* agenda.

The *Buen vivir* is being articulated in the Amazon as a political platform directed to propose specific local and national policies based on indigenous thinking. In that sense, the *Buen vivir* can be supported by the post-extractivist project which would allow reshaping the political economy of extraction in order to implement *Buen vivir* policies. However, there are ontological/epistemic limitations, such as the policymakers' thinking embedded in coloniality, and structural limitations (national and international) based on the political economy of extraction. In that sense, indigenous politics has to become global.

When indigenous politics becomes global it can be observed how indigeneity has transcended itself and its aims and agendas are embraced by non-indigenous peoples. This process entails two options which also has limitations, such as the utopian constitution of a pluriversal world (in a context in which it would be very difficult to overcome the political economy of extraction) and an utopian project in which all identities are dissolved so it is possible to propose a new universalism. Indigenous struggles, with the exception of strategic purposes, do not completely engage with any of these proposals, but present a politics of self-determination, that profoundly contributes to reshaping the boundaries of the political and to invert the current political imagination.

Chapter 9: Conclusions, contributions and implications of the research

9.1 Introduction

The argument of this thesis is that the indigenous territorial defence against extractive industries expresses an indigenous politics of self-determination that confronts coloniality as the foundation of liberal multiculturalism and the political economy of extraction. The permanence of coloniality explains how the regulative aspects of the society (how social and economic relations are organised) still respond to the inclusion/exclusion paradox: indigenous peoples are either excluded from liberal capitalism or included into it under conditions that deny indigenous principles. Indigenous peoples from different countries have suffered from the same processes of inclusion and exclusion and different ways of dispossession and violence: from indigenous peoples in Peru, Ecuador, and Bolivia to indigenous peoples in the United States, Canada and Australia. In very different places, concepts such as conquest, *terra nullius*, just war, modernisation, development, amongst others have been deployed to facilitate these processes.

By locating themselves beyond the inclusion/exclusion dialectic with claims for foundational rights (self-determination and territoriality), indigenous peoples have been promoting an extension of ‘the political’ in liberal capitalist contexts. This extension of the political has profound impacts on the reconfiguration of the state, its political economy and the way it relates to indigenous peoples.

I focused on the Awajun and the Peruvian state to analyse these processes. I found that the inclusion/exclusion paradox is reproduced in this context, but also that Awajun and state politics is much more complex than I had expected it to be. There is a certain plurality in politics within the indigenous movement and within the state. However, high technocratic spheres in the state are still dominated by a coloniality of knowledge and being and policies are embedded in the political economy of extraction. In the case of Amazonian indigenous peoples, even though they have conflicting visions on the relation they must seek with the state and companies, all such differences are usually diluted in common claims for the respect of territoriality and self-determination.

In the following sections, I return to the research aims and research questions in order to clarify the conclusions obtained from the research. Then, I explain the theoretical and empirical contributions, the policy implications, the limitations and the future research agendas.

9.2. Summary of research aims

The general aim of this research has been to analyse the tensions and conflicts between indigenous peoples' territorial rights and the expansion of liberal capitalism by exploring the meaning of the *Baguazo* and Awajun political mobilisations for defending their territorial rights against state policies and extractive industries. The specific aims of the research were as follows:

- To contribute to a multidisciplinary understanding of the conflicts between indigenous peoples' territorial rights and liberal capitalism by means of an extension of the decolonial perspective in the fields of political theory, political ecology and critical legal theory;
- To contribute to the improvement of policymaking related to indigenous rights, environmental regulation and extractive industries regulation;
- To explore the contribution of the principles of indigenous self-determination and territoriality in constructing an economic and legal alternative to liberal capitalism.

9.3. Research questions and conclusions

In this section, I present the main conclusions of the thesis by answering the specific research questions and the main research questions proposed to guide the research.

9.3.1. Specific research questions

1) What actions are undertaken by the Awajun indigenous people to accept or reject policies framed within economic development?

I addressed this question in theoretical terms in Chapter 4 and in practical terms in Chapters 6 and 8. I found that indigenous peoples in the Amazon (and in particular the Awajun), confront the discourses of economic development by claiming the necessity to respect self-determination and territorial rights as the first step in undertaking an intercultural dialogue in order to negotiate whether 'development' can be implemented and how it can be implemented.

This indigenous politics is being articulated around indigenous political organisations such as AIDESEP and CONAP. AIDESEP is particularly important because it has national, regional and local offices and a well-structured organisation with short-term and long-term strategies for the recognition of indigenous rights. AIDESEP and other local and regional organisations and leaders practise three kind of politics:

- Inside the state or institutionalised politics, which implies the occupation of state positions or the pursuit of litigation against the state;
- Outside the state or non-institutionalised politics, which implies protests and demonstrations;

- And beyond the state, which entails the use of institutional and non-institutional mechanisms at the transnational level, such as international litigation, international activism, etc.

Indigenous politics is also promoting the agenda of *Buen vivir* as an *alternative to development*, namely, as a different paradigm rooted in different ontological and epistemological views. The emphasis on the respect for nature as taking priority over extractive activities constitutes a barrier to the capitalist expansion promoted by companies and governmental policies.

The indigenous political articulations, however, are very contentious. There are internal conflicts and struggles for leadership and power within indigenous organisations. These disagreements spring from the fact that some groups consider that they can negotiate with the state and companies so as to share in the benefits of extractivism within their territories whilst other groups radically reject this possibility. It is also true that sometimes the companies and the state exploit such internal disagreements to portray a widespread acceptance of extractivism or to weaken the indigenous political organisation.

What it is important to highlight is that, though there are divergences of opinion or as they call ‘different visions’, this does not mean a negation of indigenous principles and foundational rights such as self-determination and territoriality. All indigenous peoples interviewed agree that the state and companies must respect these principles. The issue is not whether to be included in capitalism but to negotiate capitalism itself: the question of how it should or not should be expanded within indigenous territories.

2) Is it possible to conciliate indigenous peoples’ territorial rights and liberal multiculturalism? What is the nature of the contradiction and antagonism between them?

I approached this question in Chapter 3 and empirically in Chapter 6. The immediate answer is that liberal legality and indigenous territorial rights may be conciliated only if the state overcomes the paradox of inclusion/exclusion of indigenous peoples. In this sense, conciliation cannot mean the inclusion, assimilation or accommodation of indigenous peoples within the logic of liberal legality, because liberal legality in Latin America has meant the constitution of one sovereign nation which necessarily has to either exclude or include other nations in legal or material terms. Liberal legality has achieved this through mechanisms of exception by which the state can exploit indigenous territories on behalf of the ‘nation’.

The nature of the conflict is not only political in the sense of a contention within liberal capitalism, but also ontological and epistemological, inasmuch as indigenous peoples conceive their political aspirations as transcending the inclusion/exclusion paradox deployed by liberal capitalism. Therefore, the conciliation between liberal multiculturalism and indigenous territorial rights must start with the acknowledgement that indigenous peoples are ‘peoples’ with the right to self-determination. This self-determination has political, legal and economic dimensions, but also ontological and epistemological dimensions. Only after this recognition it is possible to undertake a real process of intercultural dialogue which is not directed to discussion of the terms of

inclusion of indigenous peoples, but rather the terms in which indigenous peoples and liberal capitalism constantly interact.

This process would entail necessarily the transformation of the liberal state logic from being a multicultural state that tolerates indigenous peoples, to be an intercultural state that accepts the value of indigenous peoples and its influence in transforming state policies.

3) Is it possible to conciliate indigenous peoples' territorial rights and economic development? What is the nature of the antagonism and contradiction between them?

This question has been addressed theoretically in chapter 4 and through the analysis of the case study in chapter 7 and 8. Similarly to the previous point, economic development cannot imply the assimilation of indigenous peoples.

The nature of the conflict is again not only economic but also ontological and epistemological. It entails a different valuation of land, not as resource but as being or a special site that expresses indigenous identities. It entails also a different logic of economic production; it is not about fast accumulation but about practicing organic agriculture and other activities that could ensure the re-production of the system.

In that sense, the conciliation between economic development and indigenous peoples' territorial rights entails, first of all, the respect of this different economic view and its intrinsic value. It is clear that some communities would agree with the possibility of implementing extractive activities for the purposes of economic development, but this decision of some indigenous peoples must not eliminate the decision of other indigenous peoples who prefer to maintain their economic and political organisation and claim for the construction of a sustainable political economy.

The respect of this different economy would imply also a transformation of the political economy of the state. As extractivism is inherently expansive, the barriers deployed by indigenous peoples push the state to rethink this colonial mode of accumulation and search for the economic concretisation of a new political imagination.

4) In what ways do the Awajun struggles for defending their territory and livelihoods illustrate the dynamics and processes of contention between indigenous self-determination and policy framed within liberal capitalism?

This question has been addressed in Chapters 6, 7 and 8. The Awajun struggles show all the dimensions of the conflictive encounters between indigenous politics and extractive policies: the regulative dimension and the ontological/epistemological dimension.

Regarding the regulative dimension of the encounter (the law and the economy), the Awajun mediate their politics through legal devices such as the human rights framework and the state recognition of indigenous rights (right to collective property, right to consultation) to advance their demands at national and international level.

The legal conflicts also entail that the state enacts extractive policies and indigenous policies from the perspective of coloniality, namely, privileging the exploitation of natural resources, investment stability and rapid growth and accumulation over

indigenous rights. The companies also rely on global governance in which the rights of the investors are strongly protected.

The ontological/epistemological dimension of the encounters is also relevant. There are profound differences of time, space and knowledge. Indigenous politics expresses a long-term politics based on a long-term memory (colonial resistance). This politics entails a struggle for their recognition as nations with territories and with a different cosmology. State politics and policies are short-term with a short-term memory. It constructs indigenous peoples as ethnic minorities with proprietary entitlements, whose political claims against extractive industries are seen as irrational 'anti-mining' or 'anti-development' claims related to the agrarian reform of the sixties, and the policy solution is to reinforce the extractive governance.

5) How are liberal capitalist concepts such as multiculturalism, development, human rights or property examined from indigenous politics and legality?

These concepts are unable to completely content indigenous principles and aspirations because they express the inclusion/exclusion paradox. They become universal devices that obscure the particularities of indigenous ontologies and epistemologies and its implications related to the legality and economy. This is the reason for the emergence of tensions and contradictions when indigenous peoples use these concepts and institutions in an uncritical way.

The other path of indigenous peoples is to use them as mediatory devices to express their indigeneity. In this way, the relation between indigenous peoples and liberal legality and capitalism is ambiguous because they have to engage necessarily with them to survive in a system that denies their foundational principles. It is a constant process of appropriation, denial and moving beyond these concepts and institutions.

9.3.2. General research questions

1) What are the tensions and the nature of the conflict between indigenous peoples' territorial rights and liberal capitalism (expressed in multiculturalism and economic development)?

For an important sector of indigenous politics the tensions of these conflicts are very deep and comprehend the above mentioned dimensions (economic, political/legal, ontological and epistemological). The state and companies view on indigenous peoples' vital spaces is marked by coloniality: it is a space that can only be recognised through Western legal categories such as private or collective property rights; it is a commodity to be exploited on behalf of the 'national interest'. The indigenous vision is quite different: it is a space which ensures the indigenous survival in cultural, economic and political terms; it is not a commodity but a territory that must be respected because indigenous peoples are nations.

These different narratives testify the deep differences between indigenous politics and liberal capitalism expressed in multiculturalism and economic development. Liberal multiculturalism highlights the tolerance and respect of indigenous cultures as ethnic minorities that belong to the nation insofar they do not contradict the principles of this liberal nation-state. Indigenous self-determination implies the recognition that

indigenous peoples are nations and they do not deserve solely toleration, but respect for their own forms of governance and cosmology.

Economic development highlights the necessity to exploit natural resources on behalf of the 'nation' and distribute some gains to the communities affected by this process. Indigenous foundational rights imply that, as nations, indigenous peoples hold territorial rights and before any exploitation they have the right to negotiate with the state whether or not to pursue such an extension of capitalism.

Therefore, the nature of the conflict is eminently political. It is not just a problem of governance that could be solved by better distribution, transparency or formal political representation. By proposing a politics beyond the inclusion/exclusion paradox, indigenous politics presents a conflict that entails the redefinition of the boundaries of the political and our current political imagination.

2) In what ways can indigenous self-determination and territoriality articulate an alternative to liberal capitalism?

By proposing a different conceptualisation of indigeneity, time, space, valuation of land and intercultural relations, what indigenous politics is proposing is an extension of the political. The political in Peru conceives indigenous peoples as rural peoples or peasants who are either uneducated or primitive and need assimilation into the modern society. This conceptualisation responds to a coloniality of knowledge which implies the permanence of colonial relations of power. It also supports the economic and legal aspect of the political that only can conceive indigenous peoples as citizens of the nation state with landholdings but not as peoples with territorial rights and self-determination.

An important sector of indigenous politics indeed is enlarging the political and inverting the current political imagination proposing a future in which the current extractivism could be overcome by post-extractivist strategies and the state could become intercultural.

Therefore, the indigenous agenda of *Buen vivir*, which is a political project and aspiration for the future not a current reality or a reconstruction of the past, is proposing an alternative to development and multiculturalism, the current expressions of liberal capitalism. These proposals, however, are in an initial stage and are taking form through discussions and interactions among indigenous organisations and activists. It is not a complete program but a set of principles that could foster the promotion of specific policies.

These principles entail, for example:

- Economic relations are not led by individual profit interest but by the interest of reproduction of the material and cultural conditions of the collectivity.
- The land is not simply a potential plot to be appropriated and exploited, but a locus that expresses an identity and political unity; then individual or familiar use of the land must be deployed respecting communal rules.
- Profound respect for the environment and earth beings entails that some especially vulnerable areas must be protected and managed in sustainable ways.

3) *What would be the adequate epistemological framework to theorise indigenous politics and legality at present?*

When indigenous peoples use discourses and devices such as human rights, development, multiculturalism, amongst others, there is a wrong tendency to understand their struggles in terms of post-modern politics, Marxist politics or liberal politics. This tendency shows that many scholars and activists are unable to properly understand the very particular content of the indigenous political ontology. Indeed, many indigenous struggles are decolonial struggles, this is the reason why it is important to theorise them from non-western theoretical categories, otherwise there is a risk to exert an epistemological assimilation.

Therefore, decolonial thinking and the different perspectives that engage with decolonial concepts are fundamental to theorise indigenous politics and the way they relate to liberal capitalism. Thus, concepts such as ‘human rights’ or ‘multiculturalism’ can be critically assessed from the epistemic perspective of those indigenous peoples who have suffered from the imposition of these concepts and use them politically to express their indigeneity.

9.4. Contributions and implications of the thesis

9.4.1. Theoretical contributions

Self-determination and foundational rights

I propose that indigenous self-determination can be explained from a decolonial perspective as based on the ‘the right to have communal rights’. It means a principle by which indigenous peoples have the right to enact their own legal, political and economic system as nations. This principle does not deny the interrelation of indigenous peoples with the state and the market, but denies the undertaking of these interrelations in order to assimilate indigenous peoples.

In addition, self-determination is a specific collective right that I call ‘foundational right’. I propose to differentiate between indigenous foundational rights (such as self-determination and territoriality) that support the whole indigenous system, and ‘new indigenous rights’, such as the right of consultation or the right to obtain economic benefits from extractive activities, because these rights emerged in the context of the global political economy of extraction. The rationale of foundational rights is located in the resistance against coloniality, not in constitutions and international treaties. Nonetheless, because of the indigenous activism and politics, each day the international system recognises more strongly these foundational rights.

Inclusion/exclusion paradox

In contrast to the dominant liberal theory according to which indigenous peoples must be integrated, included, assimilated or accommodated within the liberal framework as ethnic minorities, I argue that these attempts respond to the inclusion/exclusion paradox still embedded in liberal legality.

With colonisation indigenous peoples suffered from two denials: the denial of their territories and communal tenure, so they have to be converted into landowners; and the denial of their character of nations, so they have to be converted into individual citizens that belong to ethnic minorities. The way in which this process has been undertaken, ranges from an open exclusion in material and legal forms to a subtle inclusion in legal and political terms.

This paradox remains, for example, in the current attempts to eliminate the communal tenure of indigenous peoples by recognising private property on specific plots, in the application of the state of exception in the context of massive protests, or the exploitation of indigenous territories on behalf of the 'national interest'. Indigenous politics transcends this dialectic by proposing an active politics of self-determination.

Dispossession

Scholars usually understand dispossession in material terms. It entails the dispossession of land, resources, health or the gaining from the extractive activities. I propose that there is also a non-material dispossession more profound and subtle: the dispossession of identities. The dispossession of identities facilitates or legitimises the material dispossessions, and in this way, it is a fundamental element for the political economy of extraction.

The different types of dispossession are accompanied by a structural violence and slow violence. The structural violence entails legal or institutional violence and ontological violence: laws, policies and discourses that justified and legitimised coloniality. The slow violence entails the gradual and constant economic pressure on indigenous territories and the natural environment.

Extractive conflicts as a problem of politics

The majority of conceptualisations of extractive conflicts with indigenous peoples present them as problems of governance related to redistribution of rent, transparency, conflict management or formal political participation. In this way, politics is trapped within policies; there is no space to rethink social conflicts beyond the extractive governance framework. I am proposing that important socio-environmental conflicts between extractive industries and indigenous peoples are not merely a problem of ill-designed policies, but that they entail a deep problem of political ontology. Indeed, what indigenous politics is challenging is the formal understanding of social conflicts. Many indigenous contestations to extractive industries entail the reconfiguration of the state organisation, its political economy and the way it interacts with indigenous peoples. It is indeed an extension of the political.

The inversion of the political imagination

In this thesis I am proposing a different view of the political from a decolonial perspective. From radical democratic theorists, the extension of the political entails the constant reconfiguration of the boundaries of the political within the liberal state. For neo/post Marxists, it entails a total and universal overcoming of the liberal state. One decolonial approach on the political abstractly proposes a communal system which can co-exist in a context of pluriversality.

My contribution has been to analyse concrete power relations between Amazonian indigenous peoples and the state, and show that the extension of the political in indigenous politics entails the transformation of the state and its political economy in order to accept indigenous peoples as nations with territorial rights. This process implies indeed an inversion of the current political imagination. The current political imagination suggests that indigenous peoples are merely ethnic minorities to be included; social conflicts around their struggles are only problems of distribution that does not affect the logic of the political economy; their land holdings are property entitlements that can be alienated. A new political imagination would suggest that indigenous peoples are indigenous nations, their land holdings are territorial rights and, many times, the opposition that they present to extractive activities does not respond to economic interests, but to the necessity of respect their self-determination. This new national political imagination poses also a global implication because indigenous politics has the capacity to articulate different social struggles of those dominated by the legal and economic arrangements and ontological/epistemological principles of coloniality.

9.4.2. Empirical contributions

The Baguazo reconsidered

I have presented an interpretation of the *Baguazo* that does not reduce it to a specific political event triggered by President Garcia and the FTA implementation or the neoliberal policies, but as an event embedded in the long history of coloniality and the legal and ontological violence exerted against indigenous peoples. This argument relies on the analysis of openly violent and subtly violent laws, policies and discourses against Amazonian and Andean indigenous peoples from the beginning of the republic, and the interviews I undertook with indigenous peoples.

Difference between interculturalidad and mediation

It is usual among scholars to conceive the use of the economy and liberal legality by indigenous peoples as examples of how they are modernising in liberal and capitalist terms. From the analysis of my fieldwork I can argue that often indigenous peoples appropriate these devices not in order to renounce their indigeneity but to express their indigeneity.

Therefore, it is important to differentiate between the mediation and the intercultural dialogue. The mediation of the law and the economy is only one visible aspect of a much richer and more complex indigenous reality, and the intercultural dialogue entails the recognition of this social and cultural reality in all its dimensions. This kind of recognition is not the recognition within the logic of liberal capitalism but the recognition that there is another logic rooted in another ontology and epistemology, which is able to strongly influence the transformation of the state. If there is no proper recognition of this logic, the intercultural dialogue risks becoming a means to eliminate indigeneity.

Re-enforcement and re-invention of indigeneity and territoriality

From my interviews and participant observation, I could appreciate a process of reinvention of indigeneity and territoriality. Many people who were considered as peasants or *provincianos* today are proposing an active indigenous politics; they are claiming the right to reinvent their indigeneity.

Regarding territories, indigenous organisations are deploying a long-term strategy to obtain the recognition of their ‘integral territory’, so their spatial boundaries could be recognised by the state not as specific communities but as proper territories. This counter-cartography contrasts with the state cartography that defines indigenous territories as spaces for extractive exploitation.

The politics of the state

Instead of being a political structure totally determined by the economy, there are spaces for politics and progressive policies within the state. However, these spaces are very limited because the most technocratic offices in charge of extractive industries and the economic management of the country still are profoundly embedded in the logic of coloniality. Indeed, there are two limitations to implement the policies of *Buen vivir* proposed by indigenous politics. One limitation is related to the coloniality of knowledge and being of technocratic policymakers: they consider indigenous peoples as barriers to investment and nature as a commodity to be exploited. The other limitation is related to economic and legal dynamics: the state is embedded in the national and global political economy of extraction.

The emergence of Buen vivir

Buen vivir is emerging as an important discourse for the defence of self-determination and territorial rights of indigenous peoples from the Andes and the Amazon. It is forming a political platform for articulations among national and global indigenous movements and non-indigenous social movements. It also is being allied with post-extractivist agendas that could add the economic feasibility for this utopian project. Although still in their very initial stage, *Buen vivir* and post-extractivist agendas have the potentiality to establish a platform for political alliances and to propose specific policies for the inversion of the political imagination.

9.4.3. Policy implications

I suggest that this thesis has the following policy implications:

Indigenous policies

The processes of consultation and the different intercultural policies enacted by the Peruvian state in the last years could be considerably improved if the concepts and analysis developed in this thesis regarding self-determination, foundational rights, the right to consent, territorial rights, *interculturalidad* and mediation are taken into account.

A deeper policy contribution would imply the transformation of public policies and the state structure to explicitly recognise the intercultural character of the state and the character of indigenous peoples as nations in constitutional and legal norms. These theoretical developments also could influence international public policy-making, in institutions such as the UN, ILO, the Andean Community, the Inter-American Court of Human rights, amongst other international organisations.

Extractive and environmental policies

A policy implication of this research would be to foster the process of definition of the internal territorial space in Peru, with the participation of indigenous peoples. There are several projects of this kind in Peru, but indigenous peoples are normally not taken into account. The process of territorial organisation in the country must define those areas conceived as indigenous territories, the areas delimited for environmental protection and the areas in which extractive activities could be undertaken.

9.5. Limitations and future research agendas

There are theoretical and empirical research avenues that could be opened up by problematizing and further discuss the limitations of some of the assumptions underpinning the research:

a) The heterogeneity of ideas and interests within indigenous communities.

A focus on the changing interests, ideas and claims inside indigenous communities would be a rich field of study to further discuss the meaning of indigeneity and self-determination proposed in the thesis.

The research has showed contradictory views regarding the opposition or acceptance of extractive industries within Awajun territories. The research has also showed that these tensions and contradictions inside the communities do not contradict the general claim of indigenous self-determination. However, an exploration of the tensions between individual and collective rights of indigenous peoples as well as the influence of cultural and social norms of external actors in the communities could show deeper tensions that would help to investigate further the complexity and changing nature of indigeneity today.

The thesis proposes an interpretation of indigeneity in relation to territorial rights and self-determination of indigenous peoples as nations. Then, the focus of the thesis was the political, economic and juridical dimension of two specific collective rights: territory and self-determination. That is the reason why chapter one explained that the scope of the thesis was not the contradiction between individual and collective rights in general. This limitation responded to the fact that the issue of “individual versus collective rights” implies a more detailed analysis of cultural patterns, ethnicity and anthropological research that was not the scope of this thesis. Nonetheless, the development of the research made in the thesis would be a good start to further explore this problem because once we have clarity about the meaning of indigenous peoples as nations (self-determination and territoriality) and their value, it is possible to analyse the

power inequalities inside the communities and the way to mediate these tensions inside and outside ethnic groups.

Therefore, even though the lack of a detailed analysis of power dynamics inside the communities constitute a limitation of the thesis, this also opens a rich field of study to explore the limits that must be established with the recognition of indigenous self-determination and the ways to mediate the tensions and disagreements amongst individuals that belong to an indigenous nation.

b) Limitations of the concepts of foundational rights, indigeneity, self-determination and territorial rights

These concepts have been crucial for the development of the argument of the thesis; nonetheless, a further debate on their conceptual boundaries could be an opportunity to explore new research avenues.

The concept of foundational rights is a complex theoretical formulation that expresses how self-determination and territoriality are the basis of a whole indigenous legality and politics. This concept, however, could be criticised for being essentialist by asserting the existence of specific features of indigenous ontology and epistemology. A new research avenue that would start from this discussion would have to provide an anthropological analysis and a deeper engagement with theories of ethnicity, such as primordialism, instrumentalism and constructionism. The idea of foundational rights, then, could benefit from a more ethnographic research that could reaffirm the premises of the theory or could uncover its limitations by showing how specific indigenous communities renounce to their territorial rights and to be considered as nations.

A new reflection of the concept of indigeneity would also help to propose new research avenues by exploring those aspects of the notion developed in this thesis that remain contentious. For example, the idea of reinvention of indigeneity by *mestizos* or the use of indigeneity as a political platform deserve to be further explored and problematized. In specific, the process of reinvention of *mestizos* as indigenous could result problematic if it becomes a totalising project: the slogan “we all are *mestizos*” could be changed by another slogan “we all are indigenous”, what could obscure specific imbalances of power relations and inequality. This opens a research avenue to explore the limitations and potential of the indigenous aspect of “*mestizaje*”. In a similar way, the proposition of indigeneity as a political platform could be problematized by further exploring the diversity of interests and aspirations of the different social movements that struggle against globalisation: ecologists, feminists, Marxists, indigenous peoples, all of them have common ideals but also profound divergences.

Finally, the concepts of self-determination and territorial rights could be critically assessed by further exploring their limitations related to the power of the state to exploit natural resources, and the precariousness of the decentralisation policies and the project of state transformation to deal with cultural diversity. Thus, a reflection on these questions would open research avenues focused on the policy-making and the exploration in practical and theoretical terms of a model of intercultural state different from the plurinational and the multicultural models in Latin America. In this way, it would be possible to explore how an intercultural state can be implemented in a context in which indigenous peoples are in a process of reconstitution and how to interconnect

the institutional design of indigenous self-determination with the institutional designs of decentralisation. These issues would entail a large scale analysis of all government levels and many state offices.

c) Reflection on the generalizability of arguments advanced to other contexts and periods within Peru and beyond.

This thesis develops a case study analysis of the Awajun struggles for defending their territorial rights in the Peruvian Amazon in historical perspective. The argument provided in the thesis seeks to explain this specific case but it also shows how similar cases of indigenous struggles could have the same rationale: the struggle for territoriality and self-determination. For that reason, there are sporadic references to other indigenous struggles along the thesis. However, a general limitation of this research is the lack of a more profound comparative analysis to assess the generalizability of the argument proposed to other contexts. For example, as explained in chapter 7, in Peru there is a plurality of socio-environmental conflicts, with clear differences in the Amazon and in the Andes, however, there is not a detailed assessment of these particularities. Thus, the extension of the differences and the possibility or impossibility of political articulations because of these differences could constitute a new research avenue.

This limitation could also be helpful to open new research avenues by analysing the situation of indigenous peoples in other countries. For example, indigenous peoples in Brazil, Colombia and Ecuador share similar social problems, however it would be important to study these specific cases to evaluate the generalizability of the arguments provided in this thesis. In specific, it would be worth to evaluate if other Amazonian indigenous peoples from other countries share the political aspirations of the Awajun people or if it is not the case, to identify their differences.

In order to assess the possibility of generalising the arguments provided in this thesis it would be also important to undertake an investigation of the international encounters among indigenous movements and the way they interact with local and global actors (such as the UN, WBG, etc.) and how they are proposing the agenda for the *Buen vivir* and the transformation of Latin America regimes. In this way, it could be possible to develop a comparative analysis of the influence of indigenous politics in the current political transformations that are emerging in Latin America.

Finally, a new research avenue that the issue of generalizability raises would imply an analysis of the generalisation of the arguments provided in this thesis in specific historical periods. Indigenous claims and indigeneity are contextual ideals that belong to specific places and times; therefore, it is possible to evaluate the way in which the claims of self-determination and territoriality have been historically formed. For this aim it would be necessary to provide a more detailed historical analysis of the different laws, policies, archives and collective memories and explore the meaning of these two concepts in different settings and periods.

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Appendix 1: Letter of introduction



The politics of indigenous self-determination Extractive industries, state policies and territorial rights in the Peruvian Amazon

Formato de Consentimiento Informado

Usted está cordialmente invitado a participar como entrevistado en la investigación doctoral titulada "*The politics of indigenous self-determination: Extractive industries, state policies and territorial rights in the Peruvian Amazon*", que está siendo conducido por mi persona, Roger Merino Acuña. Soy un abogado peruano y candidato a Doctor por la Universidad de Bath, Inglaterra. Como parte de los requerimientos para obtener el grado académico de Doctor (Ph.D.) debo realizar un trabajo de campo en el Perú. Estoy realizando la investigación bajo la supervisión de Ana Dinerstein (Senior Lecturer, University of Bath) y Severine Deneulin (Lecturer, University of Bath).

Para realizar esta investigación he obtenido el *University Research Scholarship Excellence Award* proporcionado por la Universidad de Bath.

Objetivo de la investigación

El objetivo de la investigación en el Perú es contactar y entrevistar a 6 grupos de participantes (comunidades indígenas, líderes de protestas socio-ambientales, servidores públicos, representantes de las empresas, académicos/especialistas, y ONGs) a fin de obtener información relevante sobre la dinámica de los conflictos socio-ambientales, particularmente las contradicciones y posibilidades de negociación respecto al conflicto entre la protección de la tierra y los bienes comunes indígenas, por un lado, y la expansión de actividades extractivas por el otro. El estudio se enfocará en la Amazonía peruana, particularmente en el pueblo Awajun, y pretende analizar el conflicto desde tres niveles de conocimiento: político, jurídico y económico. El objetivo final de la investigación es ayudar a entender este tipo de conflictos y proponer soluciones a nivel de política legislativa, especialmente respecto a la protección de los pueblos indígenas y las políticas extractivas.

Importancia de la investigación

Los conflictos socio-ambientales son uno de los problemas sociales más importantes que sufre el Perú y muchos países dependientes de la industria extractiva. El tema es

particularmente relevante en el Perú debido al incremento de este tipo de conflictos en los últimos años, acompañado del incremento de concesiones de exploración y explotación sobre territorio indígena sin respetar los estándares internacionales de protección de los pueblos indígenas. Por estas razones, el resultado de esta investigación podría tener un impacto en la mejora de las políticas públicas en el Perú.

Selección de participantes

Usted ha sido considerado para participar como entrevistado en esta investigación debido a su conocimiento sobre la situación y los derechos de los Pueblos Indígenas en el Perú, así como de los conflictos sociales y el activismo judicial relacionado con este tema. Su participación es importante para este proyecto porque permitiría un mejor entendimiento de la situación real de los derechos indígenas en el Perú.

¿Qué implica participar?

Si usted está de acuerdo en participar voluntariamente en esta investigación, su participación implicará reunirse conmigo para una entrevista de aproximadamente una hora, durante la cual le haré una serie de preguntas respecto a su opinión sobre la legislación, jurisprudencia y políticas públicas de protección de los pueblos indígenas, así como su experiencia en la promoción de la protección de los derechos indígenas en el Perú a través de la labor académica, el activismo político o el activismo judicial. La entrevista será programada en la fecha, hora y lugar de su conveniencia. Antes de comenzar la entrevista, le pediré permiso para grabar digitalmente sus respuestas. Durante la entrevista también tomaré notas escritas. Si es necesario, y usted está de acuerdo, podría contactarlo nuevamente para una entrevista de seguimiento y/o para pedirle que revise cualquier información específica o cita textual que quisiera atribuir a usted en mi tesis, artículo o libro.

Participación voluntaria

Su participación en esta investigación es totalmente voluntaria. Si usted desea participar puede desistir en cualquier momento sin ninguna consecuencia o explicación. Si usted desiste de participar la información que proporcione no será usada o será usada sólo si usted da su consentimiento.

Anonimidad

Dada su experiencia académica y profesional podría ser muy útil incorporar sus opiniones mediante citas textuales. Sin embargo, usted tiene la opción de mantenerse anónimo. Si usted elige esa opción, protegeré su identidad usando códigos anónimos en lugar de su nombre.

Por favor marque una opción:

- 1) Estoy de acuerdo en ser identificado para que se me atribuyan las respuestas y opiniones que proporcione durante la entrevista.
- 2) Prefiero permanecer anónimo.

Confidencialidad

Con el fin de proteger la confidencialidad de la información que pudiera proporcionarme me aseguraré que las grabaciones digitales, transcripciones y las notas de la entrevista estén en un lugar seguro tal como un escritorio cerrado con llave o con un clave para proteger los archivos electrónicos en mi computador personal.

Riesgos

No existen riesgos conocidos como consecuencia de su participación en esta investigación.

Beneficios

Los beneficios potenciales de su participación en esta investigación incluye la oportunidad de explicar a la academia nacional e internacional la naturaleza y la importancia de su trabajo respecto al actual contexto peruano. Usted también tendrá la oportunidad de transmitir sus preocupaciones y compartir su experiencia en relación con el tema de protección de los derechos indígenas en el Perú.

Consentimiento constante

Para estar seguro de que usted continua proporcionando su consentimiento para participar en esta investigación, voy a pedirle que firme el formato de consentimiento informado cada vez que me reúna con usted.

Diseminación de resultados

Los resultados de esta investigación serán compartidos con otras personas en diferentes formatos, tales como tesis, artículos de investigación o ponencias en conferencias académicas. Bajo su solicitud, usted también podría tener acceso a un resumen de los resultados de mi investigación una vez que el análisis de la información obtenida ha sido completado.

Contactos

Puede contactarse directamente conmigo para cualquier duda en relación con la investigación (email: rm468@bath.ac.uk; tel.: 975426678), así como también puede contactar al supervisor principal Ana Dinerstein (email: a.c.dinerstein@bath.ac.uk; tel.: Tel. +44(0)1225 386958).

Su firma indica que usted está de acuerdo en participar como entrevistado en este estudio.

Nombre del Participante

Firma

Fecha

Una copia de este formato de consentimiento informado será dejada con usted, y otra copia será guardada por el investigador.